

Multiple Documents

Part	Description
1	158
2	Declaration for Standing
3	Proposed Order

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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 **STATE OF CALIFORNIA, STATE OF**
14 **NEW YORK, COMMONWEALTH OF**
15 **PENNSYLVANIA, STATE OF**
16 **CONNECTICUT, STATE OF**
17 **DELAWARE, STATE OF ILLINOIS,**
18 **STATE OF MAINE, STATE OF**
19 **MARYLAND, PEOPLE OF THE STATE**
20 **OF MICHIGAN, STATE OF NEW**
21 **JERSEY, STATE OF NEW MEXICO,**
22 **STATE OF NORTH CAROLINA, STATE**
23 **OF OREGON, STATE OF RHODE**
24 **ISLAND, STATE OF VERMONT, STATE**
25 **OF WASHINGTON, DISTRICT OF**
26 **COLUMBIA, CITY OF NEW YORK, AND**
27 **THE BAY AREA AIR QUALITY**
28 **MANAGEMENT DISTRICT,**

Plaintiffs,

v.

UNITED STATES POSTAL SERVICE,
and LOUIS DEJOY, in his official capacity
as United States Postmaster General,

Defendants.

Case No.: 3:22-cv-02583-RFL

Case No.: 3:22-cv-02576-RFL

**PLAINTIFFS' CONSOLIDATED
MOTION FOR SUMMARY JUDGMENT**

Date: November 19, 2024

Time: 10:00 a.m.

Location: Courtroom 15, 18th Floor

Judge: The Honorable Rita F. Lin

Actions Filed: April 28, 2022

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**CLEANAIRNOW; CENTER FOR
BIOLOGICAL DIVERSITY; and SIERRA
CLUB,**

Plaintiffs,

v.

**LOUIS DEJOY, in his official capacity as
U.S. Postmaster General; and U.S. POSTAL
SERVICE,**

Defendants.

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	Page
NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT	1
STATEMENT OF THE ISSUES.....	1
LEGAL BACKGROUND	3
I. The National Environmental Policy Act.....	3
II. USPS’s Status and Coverage by NEPA.....	4
FACTUAL BACKGROUND	5
I. The Environmental and Climate Impacts of Transportation Pollution	5
II. State and Local Governments’ Responses to Climate Change	6
III. Postal Delivery Trucks in the United States	8
IV. The Next Generation Delivery Vehicle Acquisition Program	8
V. The Environmental Impact Statement and Record of Decision.....	9
VI. Developments in the Program After the Original Record of Decision	11
VII. The Supplemental Environmental Impact Statement and Revised Record of Decision.....	11
VIII. Procedural History of this Litigation.....	15
STANDARD OF REVIEW	16
ARGUMENT	17
I. Plaintiffs Have Standing to Challenge the EIS and Record of Decision	17
A. Plaintiffs Have Been Injured By USPS’s NEPA Violations.....	18
1. NEPA procedures are designed to protect Plaintiffs’ concrete interests.....	18
2. USPS’s NEPA violations threaten Plaintiffs’ concrete interests	19
B. Plaintiffs Meet the Causation Element of Standing	20
C. Plaintiffs Meet the Redressability Element of Standing.....	21
II. There is No Genuine Dispute That USPS Violated NEPA by Awarding the Next Generation Delivery Vehicle Acquisition Contract Prior to Environmental Review.....	21
A. USPS Contracted Away Its Ability to Consider Reasonable Alternatives	22
B. USPS’s Significant Steps in Furtherance of Its Project Prior to Finalizing the ROD Predetermined the Results of Its Environmental Review.....	23
III. USPS Failed to Analyze Reasonable and Feasible Alternatives.....	26
A. USPS’s Failure to Consider Reasonable Alternatives Consisting of More Than 62% Electric Vehicles Was Arbitrary and Capricious.....	26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS
(continued)

		Page
	B. USPS’s Stated Reasons for Failing to Consider Additional Alternatives Are Arbitrary and Capricious.	31
IV.	USPS Failed to Take a Hard Look at the Impacts of the Project.....	33
	A. The SEIS’s Analysis Lacked the Necessary Rigor That NEPA Requires.....	33
	B. The SEIS Underestimates Emissions.....	35
	C. The SEIS Contains an Inadequate Environmental Justice Analysis	36
V.	USPS Failed to Consider the Inconsistencies of Its Preferred Alternative with State and Local Laws and Plans.....	37
VI.	This Court Should Vacate USPS’s Decision and Grant Injunctive Relief	39
	CONCLUSION.....	40

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

CASES

Akiak Native Cmty. v. U.S. Postal Serv.
213 F.3d 1140 (9th Cir. 2000)..... *passim*

Anderson v. Liberty Lobby, Inc.
477 U.S. 242 (1986)..... 16

Bark v. U.S. Forest Serv.
958 F.3d 865 (9th Cir. 2020)..... 3

Blue Mountains Biodiversity Project v. Blackwood
161 F.3d 1208 (9th Cir. 1998)..... 17

Blue Mountains Biodiversity Project v. Jeffries
72 F.4th 991 (9th Cir. 2023)..... 25

California ex rel. Lockyer v. U.S. Dep’t of Agric.
459 F. Supp. 2d 874 (N.D. Cal. 2006) 4

California ex rel. Lockyer v. U.S. Dep’t of Agric.
575 F.3d 999 (9th Cir. 2009)..... 39, 40

California v. Bernhardt
472 F. Supp. 3d 573 (N.D. Cal. 2020) 37

Chelsea Neighborhood Ass’ns v. U.S. Postal Serv.
516 F.2d 378 (2d Cir. 1975)..... 4

Citizens for Better Forestry v. U.S. Dep’t of Agric.
341 F.3d 961 (9th Cir. 2003)..... 18, 21

City of Carmel-by-the-Sea v. U.S. Dep’t of Transp.
123 F.3d 1142 (9th Cir. 1997)..... 27

City of Sausalito v. O’Neill
386 F.3d 1186 (9th Cir. 2004)..... 20, 33

Coliseum Square Ass’n, Inc. v. Jackson
465 F.3d 215 (5th Cir. 2006)..... 36

Communities Against Runway Expansion, Inc. v. FAA
355 F.3d 678 (D.C. Cir. 2004) 36

Conner v. Burford
848 F.2d 1441 (9th Cir. 1988)..... 22, 23

TABLE OF AUTHORITIES
(continued)

		<u>Page</u>
1		
2		
3	<i>Conservation Cong. v. U.S. Forest Serv.</i>	
4	No. CIV. S-13-0832	38
5	<i>Conservation Council for Haw. v. Nat’l Marine Fisheries Serv.</i>	
6	97 F.Supp.3d 1210 (D. Hawai’i 2015).....	28
7	<i>Ctr. for Bio. Diversity v. U.S. Forest Serv.</i>	
8	349 F.3d 1157 (9th Cir. 2003).....	3
9	<i>Ctr. for Biological Diversity v. Brennan</i>	
10	571 F. Supp. 2d 1105 (N.D. Cal. 2007)	16
11	<i>Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.</i>	
12	538 F.3d 1172 (9th Cir. 2008).....	32, 33
13	<i>Douglas County v. Babbitt</i>	
14	48 F.3d 1495 (9th Cir. 1995).....	18, 19
15	<i>Earth Island Inst. v. U.S. Forest Serv.</i>	
16	351 F.3d 1291 (9th Cir. 2003).....	33, 34
17	<i>el Bienestar de la Comunidad Costera v. FERC</i>	
18	6 F.4th 1321 (D.C. Cir. 2021)	36
19	<i>Friends of the Earth v. U.S. Navy</i>	
20	841 F.2d 927 (9th Cir. 1988).....	18
21	<i>Friends of Southeast’s Future v. Morrison</i>	
22	153 F.3d 1059 (9th Cir. 1998).....	27
23	<i>Hausrath v. U.S. Dep’t of the Air Force</i>	
24	491 F. Supp. 3d 770 (D. Idaho 2020).....	37
25	<i>Idaho Conservation League v. Mumma</i>	
26	956 F.2d 1508 (9th Cir. 1992).....	17, 18
27	<i>Idaho Sporting Cong. v. Rittenhouse</i>	
28	305 F.3d 957 (9th Cir. 2002).....	3
	<i>Institute for Fisheries Resources v. Burwell</i>	
	2017 WL 89003 (N.D. Cal. Jan. 10, 2017)	31
	<i>Klamath Siskiyou Wildlands Ctr. v. Boody</i>	
	468 F.3d 549 (9th Cir. 2006).....	40

TABLE OF AUTHORITIES
(continued)

		<u>Page</u>
1		
2		
3	<i>Lands Council v. McNair</i>	
4	537 F.3d 981 (9th Cir. 2008).....	17
5	<i>Lathan v. Volpe</i>	
6	455 F.2d 1111 (9th Cir. 1971).....	24
7	<i>Latin Americans for Soc. & Econ. Dev. v. Adm’r of Fed. Highway Admin.</i>	
8	756 F.3d 447 (6th Cir. 2014).....	36
9	<i>Lujan v. Defs. of Wildlife</i>	
10	504 U.S. 555 (1992).....	18, 20, 21
11	<i>Marsh v. Or. Nat. Res. Council</i>	
12	490 U.S. 360 (1989).....	34
13	<i>Massachusetts v. E.P.A.</i>	
14	549 U.S. 497 (2007).....	19, 20
15	<i>Metcalf v. Daley</i>	
16	214 F.3d 1135 (9th Cir. 2000).....	4, 22, 23
17	<i>Mid States Coal. for Progress v. Surface Transp. Bd.</i>	
18	345 F.3d 520 (8th Cir. 2003).....	36
19	<i>Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.</i>	
20	463 U.S. 29 (1983).....	17, 39
21	<i>N. Alaska Env’t Ctr. v. Hodel</i>	
22	803 F.2d 466 (9th Cir. 1986).....	40
23	<i>Nat. Res. Def. Council, Inc. v. Evans</i>	
24	168 F. Supp. 2d 1149 (N.D. Cal. 2001).....	28
25	<i>Nat’l Audubon Soc’y v. Dep’t of the Navy</i>	
26	422 F.3d 174 (4th Cir. 2005).....	25
27	<i>Occidental Eng’g Co. v. I.N.S.</i>	
28	753 F.2d 766 (9th Cir. 1985).....	17
	<i>Or. Nat. Desert Ass’n v. Bureau of Land Mgmt.</i>	
	625 F.3d 1092 (9th Cir. 2010).....	30
	<i>Or. Nat. Res. Council v. Marsh</i>	
	52 F.3d 1485 (9th Cir. 1995).....	3

TABLE OF AUTHORITIES
(continued)

		<u>Page</u>
1		
2		
3	<i>Pub. Citizen v. Dep’t of Transp.</i>	
4	316 F.3d 1002 (9th Cir. 2003).....	19, 20, 21
5	<i>Robertson v. Methow Valley Citizens Council</i>	
6	490 U.S. 332 (1989).....	3, 33
7	<i>Rumsfeld v. Forum for Acad. and Institutional Rights, Inc.</i>	
8	547 U.S. 47 (2006).....	18
9	<i>Save the Yaak Comm v. Block</i>	
10	840 F.2d (9th Cir. 1988).....	21, 22, 23, 25
11	<i>Se. Alaska Conserv. Council v. U.S. Army Corps. of Eng’rs</i>	
12	486 F.3d 638 (9th Cir. 2007).....	39
13	<i>Sierra Club v. FERC</i>	
14	867 F.3d 1357 (D.C. Cir. 2017).....	36
15	<i>Sierra Club v. U.S. Forest Serv.</i>	
16	843 F.2d 1190 (9th Cir. 1988).....	38
17	<i>Sierra Forest Legacy v. Sherman</i>	
18	646 F.3d 1161 (9th Cir. 2011).....	19
19	<i>Small v. Avanti Health Sys., LLC</i>	
20	661 F.3d 1180 (9th Cir. 2011).....	40
21	<i>State of Cal. v. Block</i>	
22	690 F.2d 753 (9th Cir. 1982).....	17, 30, 32
23	<i>Thomas v. Peterson</i>	
24	753 F.2d 754 (9th Cir. 1985).....	26
25	<i>Union Neighbors United, Inc. v. Jewell</i>	
26	831 F.3d 564 (D.C. Cir. 2016).....	29, 31
27	<i>WildEarth Guardians v. U.S. Dep’t of Agric.</i>	
28	795 F.3d 1148 (9th Cir. 2015).....	20
	<i>WildWest Inst. v. Bull</i>	
	547 F.3d 1162 (9th Cir. 2008).....	22
	STATUTES	
	5 United States Code	
	§ 706(2)(A)	17

TABLE OF AUTHORITIES
(continued)

		<u>Page</u>
1		
2		
3	38 Maine Revised Statutes	
4	§ 576-A	6
5	39 United States Code	
6	§ 201	4
7	§ 410(a)	4
8	42 United States Code	
9	§ 4321	1
10	§ 4332	4
11	§ 4332(2)(C)	3, 19, 33
12	§ 4332(2)(C)(iii)	4, 26
13	2022 Maryland Law	
14	ch. 38 § 3	7
15	ch. 38 § 4	7
16	Annotated Statutes of New Mexico	
17	§§ 62-18-1.	7
18	California Health & Safety Code	
19	§ 38501	38
20	§ 38562.2	6
21	Colorado Revised Statutes	
22	§ 25-7-102(2)(g)	6
23	Delaware Code Title 7	
24	§ 10003	6
25	General Statutes of Connecticut	
26	§ 22a-200a(a)	6
27	New Jersey Statutes Annotated	
28	26:2C-39	7
	26:2C-40	7
	New Mexico Administrative Code	
	§§ 20.2.1.1 - 20.2.101.115	19
	New York City Administrative Code	
	§ 24-803	7
	New York Environmental Law	
	§ 75-0107(1)	7

TABLE OF AUTHORITIES

(continued)

	<u>Page</u>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
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20	
21	
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23	
24	
25	
26	
27	
28	

TABLE OF AUTHORITIES

(continued)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

87 Fed. Reg.
14,589 (Mar. 15, 2022) 10
5,581 (June 10, 2022)..... 11, 12
994 (Jan. 7, 2022)..... 10

88 Fed. Reg.
67,277 (Sept. 29, 2023) 14
85,936 (Dec. 11, 2023)..... 15, 16

Exec. Order No. 2019-01 7

Office of Inspector General, Electric Delivery Vehicles and the Postal Service,
Report No. RISC-WP-22-003 (Mar. 17, 2022)..... 11

Pub. L. No. 91-375, 84 Stat. 719 (1970)..... 4

Pub. L. No. 117-169, § 70002, 136 Stat. 1818, 2086-87 (2022)..... 11

USPS, Press Release, “USPS Intends To Deploy Over 66,000 Electric Vehicles by
2028, Making One of the Largest Electric Vehicle Fleets in the Nation” (Dec.
20, 2022) 12

USPS, Press Release, “USPS Moves Forward with Awards to Modernize and
Electrify the Nation’s Largest Federal Fleet” (Feb. 28, 2023)..... 13

1 **NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

2 PLEASE TAKE NOTICE that on November 19, 2024 at 10:00 a.m., or as soon thereafter
3 as the matter may be heard, Plaintiffs California, New York, Pennsylvania, Colorado,
4 Connecticut, Delaware, Illinois, Maine, Maryland, People of the State of Michigan, New Jersey,
5 New Mexico, North Carolina, Oregon, Rhode Island, Vermont, Washington, District of
6 Columbia, the City of New York, and the Bay Area Air Quality Management District
7 (“Government Plaintiffs”), and CleanAirNow, Center for Biological Diversity, and Sierra Club
8 (“NGO Plaintiffs”), jointly move this Court for summary judgment pursuant to Federal Rule of
9 Civil Procedure 56.

10 Plaintiffs seek a court order: (1) granting summary judgment against defendants United
11 States Postal Service and Louis DeJoy, in his official capacity as United States Postmaster
12 General (collectively, “USPS” or “Defendants”); (2) declaring USPS’s Final Environmental
13 Impact Statement, Supplemental Environmental Impact Statement, Record of Decision, and
14 Revised Record of Decision unlawful, arbitrary, capricious, and an abuse of discretion under the
15 National Environmental Policy Act; (3) vacating the Record of Decision and revised Record of
16 Decision; (4) remanding the Environmental Impact Statement and Supplemental Environmental
17 Impact Statement to USPS; and (5) enjoining the Next Generation Delivery Vehicles Acquisition
18 Program until Defendants fully comply with the National Environmental Policy Act by preparing
19 a new and legally compliant Environmental Impact Statement.

20 **STATEMENT OF THE ISSUES**

21 This case is about USPS’s violations of the National Environmental Policy Act, 42 U.S.C.
22 § 4321 *et seq.* (“NEPA”), by repeatedly committing to a predetermined course of action,
23 contracting away billions of dollars of taxpayer money, and only reviewing the environmental
24 consequences after the fact. Plaintiffs brought this case after USPS announced a contract to
25 replace a portion of its aging mail delivery vehicle fleet with up to 165,000 vehicles, with as
26 many as 90% internal combustion engine (“gas-powered”) trucks. Although USPS later
27 announced—after Congress appropriated \$3 billion for USPS to purchase electric vehicles and
28 associated infrastructure—that it planned to replace up to 106,480 postal delivery vehicles, 62%

1 of which would be electric vehicles and 38% gas-powered, it again made this decision *before*
2 completing the required NEPA review. When it finally conducted NEPA review, USPS failed to
3 consider reasonable alternatives and adequately evaluate environmental impacts. Throughout this
4 flawed process, USPS committed several NEPA violations, each of which warrant injunctive
5 relief.

6 *First*, USPS awarded the Next Generation Delivery Vehicle Acquisition contract to
7 Oshkosh Defense, LLC (“Oshkosh”)—and committed substantial public resources—before even
8 starting the required environmental review. USPS continued to violate NEPA by awarding
9 contracts before publishing its draft supplemental environmental review. These premature
10 commitments resulted in an environmental review that skewed USPS’s analysis towards its
11 predetermined decision and precluded the full and fair analysis of feasible alternatives required
12 under NEPA.

13 *Second*, USPS failed to adequately consider and analyze a reasonable range of
14 alternatives. Initially, the Final Environmental Impact Statement (“EIS”) failed to consider any
15 percentage of electric vehicles between a 10% minimum and 100% maximum. The Supplemental
16 EIS (“SEIS”) merely added two nearly identical alternatives, to procure 62% electric and 38%
17 gas-powered vehicles, and ignored public comments calling for USPS to consider higher
18 percentages of electric or other zero-emission vehicles.

19 *Third*, USPS failed to take the required “hard look” at the Next Generation Delivery
20 Vehicle Acquisition Program’s (“Program”) direct, indirect, and cumulative impacts, and failed to
21 ensure the scientific integrity of its analysis. Throughout the EIS and SEIS, USPS failed to
22 support numerous conclusions, resulting in technical analyses that lacked the rigor required by
23 NEPA. This included abandoning a total cost of ownership model in favor of focusing on upfront
24 acquisition costs without a reasoned explanation, relying on an overly generalized classification
25 for its trucks that resulted in underestimated emissions from gas-powered alternatives, and
26 performing a cursory analysis of environmental justice impacts that was insufficient under NEPA.

27 *Fourth*, USPS violated NEPA’s requirement to consider its decision’s consistency with
28 laws and policies enacted by Government Plaintiffs to reduce greenhouse gas (“GHG”) emissions

1 and promote development of zero-emission vehicles.

2 Gas-powered postal delivery trucks that are sold over the next ten years could be on the
3 road for twenty or more years, meaning that the consequences of this decision will be felt decades
4 into the future. A timely and proper environmental review is essential for a government purchase
5 of this magnitude. NEPA requires—and indeed its very purpose is—informed consideration of
6 environmental impacts and alternatives, *before* settling on a course of action.

7 LEGAL BACKGROUND

8 I. The National Environmental Policy Act

9 NEPA is “the basic national charter for protection of the environment.” 40 C.F.R.
10 § 1500.1(a). At its core, the statute is guided by the principle that “by focusing the agency’s
11 attention on the environmental consequences of a proposed project . . . important effects will not
12 be overlooked or underestimated only to be discovered after resources have been committed or
13 the die otherwise cast.” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).
14 NEPA requires a “hard look” at the consequences of a proposed action to ensure that “the agency,
15 in reaching its decision, will have available, and will carefully consider, detailed information
16 concerning significant environmental impacts” from the action. *Id.*; *see also Idaho Sporting*
17 *Cong. v. Rittenhouse*, 305 F.3d 957, 973 (9th Cir. 2002). If the agency has not taken a “hard
18 look,” then a court may set aside the agency’s action. *Or. Nat. Res. Council v. Marsh*, 52 F.3d
19 1485, 1488 (9th Cir. 1995).

20 NEPA also “guarantees that the relevant information will be made available to the larger
21 audience that may also play a role in both the decisionmaking process and the implementation of
22 that decision.” *Robertson*, 490 U.S. at 349. Its “disclosure requirement[s] obligate[] the agency to
23 make available to the public high-quality information, including accurate scientific analysis,
24 expert agency comments and public scrutiny, before decisions are made and actions are taken.”
25 *Ctr. for Bio. Diversity v. U.S. Forest Serv.*, 349 F.3d 1157, 1167 (9th Cir. 2003).

26 To meet the “hard look” and disclosure requirements, agencies must prepare an EIS for
27 federal actions that will “significantly affect[] the quality of the human environment.” 42 U.S.C.
28 § 4332(2)(C); *Bark v. U.S. Forest Serv.*, 958 F.3d 865, 868 (9th Cir. 2020). The EIS must

1 examine the “alternatives to the proposed agency action.” 42 U.S.C. § 4332(2)(C)(iii). This
 2 requirement “lies at the heart of any NEPA analysis.” *California ex rel. Lockyer v. U.S. Dep’t of*
 3 *Agric.*, 459 F. Supp. 2d 874, 905 (N.D. Cal. 2006).

4 “Agencies shall not commit resources prejudicing selection of alternatives before making
 5 a final decision.” 40 C.F.R. § 1502.2(f); *see also id.* § 1506.1 (headed “Limitations on actions
 6 during NEPA process”). An EIS “shall be prepared early enough so that it can serve as an
 7 important practical contribution to the decision-making process and will not be used to rationalize
 8 or justify decisions already made.” *Id.* § 1502.5. Thus, agencies must “prepare NEPA
 9 documents . . . before any irreversible and irretrievable commitment of resources.” *Metcalf v.*
 10 *Daley*, 214 F.3d 1135, 1143 (9th Cir. 2000).

11 **II. USPS’s Status and Coverage by NEPA**

12 USPS is an “independent establishment of the executive branch of the Government of the
 13 United States,” 39 U.S.C. § 201, and, as an agency of the federal government, is subject to NEPA
 14 requirements.¹ 42 U.S.C. § 4332; 40 C.F.R. § 1500.3(a); *see also Akiak Native Cmty. v. U.S.*
 15 *Postal Serv.*, 213 F.3d 1140, 1144 (9th Cir. 2000); *Chelsea Neighborhood Ass’ns*, 516 F.2d at
 16 386.²

17 USPS has recognized its NEPA obligations by, among other things, promulgating agency-
 18 specific NEPA procedures in 39 C.F.R. Part 775, in which USPS recognizes its responsibilities to
 19 “[i]nterpret and administer applicable policies, regulations, and public laws of the United States in
 20 accordance with the policies set forth in [NEPA] and the NEPA Regulations.” 39 C.F.R.
 21 § 775.2(a). These regulations stress that USPS’s policy is to “[e]mphasize environmental issues
 22 and alternatives in the consideration of proposed actions,” to “identify and assess reasonable
 23 alternatives to proposed actions in order to avoid or minimize adverse impacts on the

24 _____
 25 ¹ The Postal Reorganization Act (“PRA”), *see* Pub. L. No. 91-375, 84 Stat. 719 (1970),
 26 exempts USPS from some federal laws, unless “such laws remain in force as rules or regulations
 of [USPS].” 39 U.S.C. § 410(a). The PRA does not exempt USPS from NEPA. *Chelsea*
Neighborhood Ass’ns v. U.S. Postal Serv., 516 F.2d 378, 386 (2d Cir. 1975).

27 ² Postmasters General are appointed by the USPS Board of Governors (“Board”), whose
 28 members are nominated by the President and confirmed by the Senate. The position does not have
 a fixed term length and a Postmaster General may serve until removed by the Board. The current
 Postmaster General, Louis DeJoy, was appointed in 2020.

1 environment,” and to “[u]se all practicable means to protect, restore, and enhance the quality of
2 the human environment.” *Id.* § 775.2(c), (e), (f). Courts review USPS’s compliance with NEPA
3 under an arbitrary and capricious standard of review. *See Akiak*, 213 F.3d at 1144.

4 **FACTUAL BACKGROUND**

5 **I. The Environmental and Climate Impacts of Transportation Pollution**

6 Fossil-fuel burning vehicles are a significant source of conventional pollutants such as
7 volatile organic compounds, nitrogen oxides, carbon monoxide, and particulate matter as well as
8 climate warming GHGs. Administrative Record (“AR”) 7627. The conventional pollutants
9 emitted from these vehicles negatively impact public health, particularly in areas already
10 overburdened by pollution. AR 361. USPS itself identified the meaningful reductions in these
11 pollutants which would come from replacing its current outdated and highly polluting fleet of
12 delivery trucks. AR 9024-25. For example, USPS’s own analysis of the SEIS’s preferred
13 alternative (62% electric and 38% gas-powered) projected that it would reduce direct GHG
14 emissions by 798,181 metric tons of carbon dioxide equivalents annually. AR 9749. Similarly,
15 USPS found that the preferred alternative would reduce direct emissions of conventional
16 pollutants, including volatile organic compounds by 5,858 tons per year and carbon monoxide by
17 75,201 tons per year. *Id.* However, higher percentages of electric vehicles—had they been
18 considered—could more significantly reduce direct emissions of these pollutants: with 38% gas-
19 powered trucks, the fleet is still expected to directly emit over 121 tons per year of volatile
20 organic compounds and 1,358 tons per year of carbon monoxide into neighborhoods across the
21 country, and 261,131 metric tons of carbon dioxide equivalents. *Id.* Electric vehicles would have
22 no such direct emissions. AR 9024.

23 Air pollution, including particulate matter and smog, causes or exacerbates health harms,
24 including shortness of breath, asthma attacks, reduced lung function, lung cancer, increased infant
25 mortality, increased hospital admissions for cardiovascular disease, and premature death. AR
26 9295-96, 9598. Government Plaintiffs face significant economic losses with each additional ton
27 of carbon pollution, as heat waves, droughts, wildfires, extreme rainfall, and floods plague the
28 nation. AR 9350, 9585, 9591. Furthermore, the Intergovernmental Panel on Climate Change has

1 determined that there is a narrow and rapidly closing window in which to limit global warming to
 2 1.5 degrees Celsius, the international goal set to avoid the worst catastrophic damages to the
 3 United States and the rest of the world. AR 10815.

4 The health harms from transportation pollution fall disproportionately on low-income
 5 communities and communities of color. AR 9598, 9628, 9296. For example, many highways,
 6 busy roads, and depots, including USPS depots, are located in low-income communities and
 7 communities of color. Low-income communities and communities of color breathe some of the
 8 worst air in the country. AR 9312-13.

9 Transitioning to zero-emission vehicles, which do not require gasoline and emit no
 10 tailpipe pollution, will ameliorate these climate and health impacts. Electric vehicle availability,
 11 reliability, and affordability have increased dramatically in recent years. AR 9863-73.

12 **II. State and Local Governments' Responses to Climate Change**

13 Government Plaintiffs have long been leaders in adopting laws and plans to reduce GHG
 14 emissions and slow the pace of climate change, AR 9330-31, 9591-93, including policies to
 15 promote the development and adoption of zero-emission technologies in the transportation sector:

- 16 • California's laws and plans include: (1) a policy to achieve 85% below 1990 GHG emissions
 17 levels by 2045, carbon neutral (net zero) GHG by 2045, and to achieve and maintain net
 18 negative GHG emissions thereafter, AB 1279, Cal. Health & Safety Code § 38562.2; and (2) a
 19 policy to achieve carbon neutrality by 2045, Exec. Order No. B-55-18. The Bay Area Air
 Quality Management District ("BAAQMD") has set a target that 90% of vehicles in the Bay
 Area should be zero emission by 2050, with an interim target of 1.5 million such vehicles by
 2030.
- 20 • Colorado laws require net-zero statewide GHG pollution by the middle of the twenty-first
 21 century and establish interim targets to reduce GHG emissions by a minimum of 26% by
 22 2025, 50% by 2030, 65% by 2035, 75% by 2040, 90% by 2045, and 100% by 2050,
 compared to 2005 levels. Colo. Rev. Stat. § 25-7-102(2)(g).
- 23 • Connecticut must reduce the level of GHG emissions in the state by at least 45% below the
 24 2001 level by 2030 and by at least 80% below the 2001 level by 2050. Conn. Gen. Stat. § 22a-
 200a(a).
- 25 • Delaware established a Climate Action Plan aiming to reduce statewide GHG emissions by
 26 50% below 2005 levels by 2030, and to achieve net-zero emissions by 2050. Del. Code tit. 7,
 §10003.
- 27 • Maine must reduce its gross annual greenhouse gas emissions to at least 45% below 1990
 28 levels by 2030, and to at least 80% below 1990 levels by 2050. 38 M.R.S. § 576-A. Maine
 also must achieve net carbon neutrality by 2045. *Id.* A focus of Maine's plan to reduce

1 emissions is decarbonization of the transportation sector. *See* Me. Exec. Order No. 36 FY
2 20/21 (Mar. 30, 2021).

- 3 • Maryland law requires the state to reduce GHG emissions 60% below 2006 levels by 2031,
4 and to achieve net-zero GHG emissions by 2045. Climate Solutions Now Act of 2022, 2022
Md. Laws, ch. 38, §§ 3-4.
- 5 • The Global Warming Response Act commits New Jersey to reducing GHG emissions to 80%
6 below their 2006 levels by 2050. N.J. Stat. Ann., 26:2C-39, 26:2C-40.
- 7 • New Mexico has enacted an Energy Transition Act, which sets standards for electric utilities
8 of 50% renewable energy by 2030, 80% by 2040, and 100% by 2050. N.M. Stat. Ann. §§ 62-
9 18-1, *et seq.*
- 10 • New York must reduce economy-wide GHG emissions 40% below 1990 levels by 2030 and
11 at least 85% below 1990 levels by 2050. *See* N.Y. Env'tl. Conserv. L. § 75-0107(1).
- 12 • The City of New York has committed to reducing GHG emissions 80% below 2005 levels by
13 2050, *see* NYC Admin. Code § 24-803, and has issued numerous plans describing its path to
14 achieving this goal, all of which call for increased electrification of the transportation sector.
15 AR 9930.
- 16 • Pennsylvania has adopted a Climate Action Plan to comply with the governor's commitment
17 to reach a 26% reduction in GHG by 2025 and an 80% reduction by 2050. Exec. Order No.
18 2019-01; AR 9931.
- 19 • Rhode Island's climate laws and plans include: Rhode Island's 2021 Act on Climate which,
20 *inter alia*, mandates GHG emission reductions to 45% below 1990 levels by 2030; 80%
21 below 1990 levels by 2040, and to net-zero emissions by 2050. *See* R.I. Gen Laws § 42-6.2-
22 9. As of 2026, there will be a statutory right to bring actions, including actions against the
23 State and its agencies, for failure to comply with the 2021 Act on Climate. *See* R.I. Gen Laws
24 § 42-6.2-9.
- 25 • The Vermont Global Warming Solutions Act requires Vermont to reduce GHG emissions to
26 26% below 2005 levels by 2025, 40% below 1990 levels by 2030, and 80% below 1990 levels
27 by 2050. Vt. Stat. Ann. tit. 10, § 578.
- 28 • Washington State must reduce overall GHG emissions in the state by 45% below 1990 levels
by 2030. Wash. Rev. Code § 70A.45.020(1)(a)(ii). Washington has also set a target of 100%
electric passenger and light-duty vehicle sales starting in model year 2030. *Id.*
§ 43.392.020(1).

23 Recognizing that zero-emission vehicles are crucial to addressing the climate crisis and
24 reducing air pollution across the nation, President Biden issued an executive order in 2021 that
25 committed to transition the federal vehicle fleet to zero-emission vehicles. This executive order
26 specifically directed government agencies to acquire only zero-emission light-duty vehicles after
27 2027. Exec. Order No. 14057: *Catalyzing Clean Energy Industries and Jobs Through Federal*
28 *Sustainability*, 86 Fed. Reg. 70,935 (Dec. 8, 2021).

1 **III. Postal Delivery Trucks in the United States**

2 USPS operates 212,000 delivery vehicles, representing over 30% of the overall federal
3 fleet. AR 28. This constitutes not only the largest government fleet in the country, but one of the
4 largest civilian fleets in the world. AR at 34. More than 125,000 of USPS's 212,000 delivery
5 vehicles are purpose-built, right-hand-drive light delivery vehicles labeled "Long-Life Vehicles,"
6 and another 21,000 are similar "Flexible Fuel Vehicles." See AR 353. Much of the current fleet
7 has operated for decades—long past its intended lifespan. Current Long-Life Vehicles are costly
8 and lack optimal safety features such as airbags and anti-lock brakes. AR 35. Long-Life Vehicles
9 average over \$4,500 in annual maintenance costs, and total annual maintenance costs exceeded
10 \$700 million for these vehicles in 2019. See AR 309, 9005.

11 Postal delivery trucks are highly suited for electrification. The vast majority of postal
12 delivery routes are under 70 miles—well within a single battery charge—and USPS makes
13 deliveries during predictable work hours, which provide opportunities for off-duty charging. AR
14 9810. An electrified USPS fleet would reduce tailpipe emissions of conventional pollutants and
15 GHGs and dramatically reduce the significant operating and maintenance costs associated with a
16 fleet of gas-powered vehicles.

17 **IV. The Next Generation Delivery Vehicle Acquisition Program**

18 On January 20, 2015, USPS initiated its Program by issuing a Request for Information
19 from prospective suppliers, which included draft specifications and plans for the fleet
20 replacement. AR 29. USPS then engaged in a lengthy process of reviewing submissions,
21 considering prototype proposals, awarding contracts for 44 prototype vehicles, testing prototypes,
22 and requesting further proposals, all before beginning NEPA review. AR 29-30. In July 2020,
23 USPS began evaluating the proposals, which each included both gas-powered and electric
24 vehicles. AR 30. However, the agency did not consider the proposals' environmental impacts
25 under NEPA.

26 On February 23, 2021, again, before even *beginning* its NEPA review, USPS announced a
27 contract award to Oshkosh for the future production of Next Generation Delivery Vehicles. AR
28 30, 8742. Oshkosh had stated only a year earlier in a securities filing that it lacked "the expertise

1 or resources” to produce electric vehicles on a “cost-effective basis or at all.” Plaintiffs Request
2 for Judicial Notice (“RJN”) at Exh. A-27. The final contract allowed for up to 90% of purchased
3 vehicles to be gasoline-fueled. AR 3. The contract also required a minimum order of 50,000
4 vehicles. AR 8743. After committing to a minimum order of 50,000 vehicles, USPS placed its
5 initial task order with Oshkosh. AR 30. The order, which allocated a sum of \$482 million, funded
6 Oshkosh’s production design, assembly tooling, and factory start-up costs. AR 30, 358.
7 Importantly, USPS explicitly directed Oshkosh to “proceed diligently with the performance of the
8 contract” while the NEPA review was being done. AR 8750. Accordingly, the supplier selected a
9 new 900,000-square-foot production facility and began retrofitting it. Declaration of Thomas
10 Quigley, sworn June 15, 2022, at ¶13, 3:22-cv-02576-JD (“Gov’t Dkt.”) 82-1.

11 **V. The Environmental Impact Statement and Record of Decision**

12 After entering into the Oshkosh contract, USPS began its belated environmental review on
13 March 4, 2021, when it published a Notice of Intent to prepare an EIS for the Program. 86 Fed.
14 Reg. 12,715 (Mar. 4, 2021). USPS received 1,753 timely letters from interested parties, including
15 federal agencies and a number of the Plaintiffs. AR 32. On August 26, 2021, USPS published a
16 Notice of Availability of Draft Environmental Impact Statement for Purchase of Next Generation
17 Delivery Vehicles. 86 Fed. Reg. 47662 (Aug. 26, 2021). The Draft EIS analyzed four options: (1)
18 a Proposed Action, which is a purchase and deployment of Next Generation Delivery Vehicles
19 under two hypothetical maximum scenarios (up to 90% gas-powered vehicles and a 10% to 100%
20 electric vehicles alternative); (2) an alternative entailing a purchase and deployment of 100%
21 right-hand-drive commercially available off-the-shelf gas-powered vehicles; (3) an alternative
22 entailing a purchase and deployment of 100% left-hand drive commercially available electric
23 vehicles; and (4) a No Action alternative. AR 40-43.

24 The public submitted over 37,511 comments, many of them critical of the Draft EIS. AR
25 33. In its comments, the United States Environmental Protection Agency (“EPA”) explained that
26 the Draft EIS lacked adequate data and presented biased cost and emissions estimates, thereby
27 precluding “meaningful consideration of the proposed action and alternatives.” AR 118. Other
28 federal agencies and the public strongly criticized the Draft EIS for violating NEPA by, *inter alia*,

1 failing to include reasonable alternatives in its analysis, using incorrect cost information, failing
2 to take a hard look at air quality and socioeconomic impacts, lacking a proper analysis of
3 cumulative effects, and failing to consider environmental justice. AR 156-204. Despite this
4 criticism, on January 7, 2022, USPS published an EIS that was nearly identical to the Draft EIS
5 and reiterated the agency’s intention to purchase up to 90% gas-powered vehicles. *See* Notice of
6 Availability of Final Environmental Impact Statement for Purchase of Next Generation Delivery
7 Vehicles, 87 Fed. Reg. 994 (Jan. 7, 2022). The EIS rejected an alternative of 100% battery
8 electric vehicles and evaluated no other percentage of electric or other zero-emission vehicles.

9 In addition to failing to consider a reasonable range of alternatives, the EIS was flawed in
10 several other ways. It relied on acquisition and maintenance cost data based, at least in part, on
11 the undisclosed contract awarded to Oshkosh, despite requests for USPS to make that information
12 public as required by NEPA. AR 120-21,124-26, 358-60, 373-74. The EIS also failed to
13 adequately evaluate environmental justice impacts between alternatives and did not consider the
14 inconsistency of the selected alternative with state and local laws that require reductions in GHG
15 emissions and a transition to zero-emission vehicles.

16 Expert agencies renewed their earlier concerns. EPA reiterated that awarding a contract
17 for the delivery vehicles in advance of starting the environmental analysis violated NEPA, and it
18 noted “that EPA’s concerns with the Draft EIS were not adequately addressed” and that “the EIS
19 remains seriously deficient.” AR 358, 363-70.

20 Similarly, the Council on Environmental Quality (“CEQ”)—the agency tasked with
21 administering NEPA—issued a letter on the EIS emphasizing that USPS “committed to walk
22 down a path before looking to see where that path was leading” by awarding a contract for the
23 delivery vehicles before beginning NEPA review—an “approach [that] conflicts with
24 longstanding NEPA practice and law.” Plaintiffs RJN at Exh. B-1.

25 On February 23, 2022, USPS issued a Record of Decision (“ROD”) that incorporated the
26 EIS by reference. Next Generation Delivery Vehicles Acquisitions, 87 Fed. Reg. at 14,589 (Mar.
27 15, 2022). The ROD indicated USPS would purchase up to 148,500 gas-powered vehicles over
28 the next 10 years. The ROD altered its description of alternatives by combining the 90% gas-

1 powered alternative and the 10% battery electric alternative into one alternative described as the
2 “proposed action.” The EIS analysis did not change as a result of this change in the ROD. USPS
3 originally stated in the ROD that it would not issue a supplemental EIS under 40 C.F.R. section
4 1502.9(d)(1) to address EPA’s concerns. AR 4-5. USPS provided no opportunity for public
5 comment on the ROD. On March 24, 2022, USPS placed an order for 50,000 Next Generation
6 Delivery Vehicles, of which only 10,019 are battery electric vehicles. Notice of Intent to Prepare
7 a Supplement to the Next Generation Delivery Vehicles Acquisitions Final Environmental Impact
8 Statement, 87 Fed. Reg. 35,581 (June 10, 2022).

9 **VI. Developments in the Program After the Original Record of Decision**

10 Following USPS’s issuance of the ROD, several relevant developments occurred. On
11 March 17, 2022, USPS’s Office of Inspector General issued a report finding that electric vehicles
12 are generally capable of meeting USPS’s needs, particularly on longer routes.³ The Inspector
13 General projected that electric vehicles are likely to be more affordable to own than gas-powered
14 vehicles in certain cases, even in the absence of any financial incentives. *Id.*

15 In August 2022, Congress passed the Inflation Reduction Act, which provides \$3 billion
16 to USPS, including \$1.29 billion in subsidies for the purchase of zero-emission vehicles and
17 \$1.71 billion for the purchase, design, and installation of infrastructure to support them. Pub. L.
18 No. 117-169, § 70002, 136 Stat. 1818, 2086-87 (2022).

19 **VII. The Supplemental Environmental Impact Statement and Revised Record of** 20 **Decision**

21 Plaintiffs filed this litigation challenging the initial ROD on April 28, 2022. See *infra*
22 Section VIII. Shortly thereafter, on June 10, 2022, USPS published a notice of intent to prepare a
23 supplemental EIS. 87 Fed. Reg. 35,581. In that same notice, the agency stated that on March 24,
24 2022, it had already placed an order for 50,000 Next Generation Delivery Vehicles, of which
25 10,019 are battery electric vehicles. *Id.* USPS stated that its SEIS would address, among other
26 things, “network refinements and route optimization efforts” that could increase the minimum

27 _____
28 ³ See USPS, Office of Inspector General, Electric Delivery Vehicles and the Postal Service, Report No. RISC-WP-22-003 (Mar. 17, 2022), Plaintiffs RJN at Exh. C.

1 number of electric vehicles acquired under the program and the need to accelerate replacement of
2 the fleet with a combination of Next Generation Delivery Vehicles and commercially available
3 vehicles. *Id.* On July 21, 2022, USPS published a revised draft notice stating that the agency’s
4 preferred alternative would include: (1) the purchase and deployment of 50,000 Next Generation
5 Delivery Vehicles; and (2) acquisition of up to 20,000 left-hand-drive commercial vehicles and
6 14,500 right-hand-drive gas-powered vehicles within the next two years. AR 10798-99. The
7 preferred alternative tracks USPS’s order four months prior for 50,000 Next Generation Delivery
8 Vehicles. 87 Fed. Reg. 35,581.

9 Government Plaintiffs filed scoping comments on August 15, 2022, AR 11615, stating,
10 *inter alia*, that USPS should pause its unlawful Oshkosh contract while its supplemental review is
11 completed, assess a reasonable range of alternatives, including 80% and 95% electric alternatives,
12 and account for inconsistencies with approved state and local laws, policies and plans.⁴ The NGO
13 Plaintiffs similarly emphasized the need for USPS to pause the contract with Oshkosh and
14 examine a full set of alternatives, including 95% and 100% electric vehicles, in light of newly
15 appropriated funding. The NGO Plaintiffs’ comments further stated that the SEIS would violate
16 NEPA if it failed to update data and assumptions used in the total cost of ownership analysis,
17 such as gas prices. NGO Plaintiffs also urged USPS to undertake a required environmental justice
18 analysis. Finally, the comments urged USPS management and staff to engage the public in this
19 decisionmaking process. AR 11591-600.

20 In December 2022, once again before releasing the required supplemental NEPA analysis,
21 USPS announced it expected to acquire 106,000 vehicles—at least 66,000 (or 62%) of which
22 would be electric—between 2022 and 2028. Plaintiffs RJN at Exh. D.⁵ The announcement further
23 stated that acquisitions in 2026 and after were expected to be 100% electric. Two months later,
24 USPS prematurely and unlawfully awarded new separate contracts to purchase 9,250 commercial

25 ⁴ Government Plaintiffs filed a supplemental scoping comment letter on February 2, 2023,
26 urging USPS to follow newly released guidance from CEQ on assessing GHG emissions and
climate change impacts in NEPA reviews.

27 ⁵ USPS, Press Release, “USPS Intends To Deploy Over 66,000 Electric Vehicles by 2028,
28 Making One of the Largest Electric Vehicle Fleets in the Nation” (Dec. 20, 2022).

1 gas-powered vehicles, 9,250 commercial electric vehicles, and 14,000 electric vehicle charging
2 stations. Plaintiffs RJN at Exh. E.⁶

3 In April 2023, the USPS Office of Inspector General completed its report examining the
4 Program’s compliance with NEPA. The report recommended that the SEIS include an evaluation
5 of more alternatives, update the total cost of ownership analysis, and update the assumptions
6 underlying the environmental analysis to more fully reflect Next Generation Delivery Vehicle
7 emissions. AR 11517-39.

8 In April 2023, the Government Accountability Office (“GAO”) issued a report titled,
9 “Action Needed to Improve Credibility of Cost Assumptions for Next Generation Delivery
10 Vehicles.” Plaintiffs RJN at Exh. F. The GAO found that assumptions about two cost factors—the
11 price of gasoline and the cost of installing electric charging infrastructure—had the potential to
12 considerably affect the calculation of how many electric and gas vehicles to purchase. For
13 example, increasing the gasoline price by \$1.00 within a selected range of prices resulted in a
14 recommendation that almost 90% of the delivery vehicles be electric. *Id.* at p. F-2.

15 On June 30, 2023, USPS released the Draft SEIS for public comment. Specifically, the
16 Draft EIS considered: (1) the acquisition of 106,480 vehicles, consisting of 62% electric vehicles
17 and 38% gas-powered vehicles, and including 60,000 purpose-built vehicles, 14,500 right-hand-
18 drive commercial gas-powered vehicles, and 31,980 commercial or purpose-built vehicles, to be
19 deployed over a period of six years (the “SEIS Preferred Alternative”); (2) the acquisition of
20 106,480 vehicles, consisting of 62% electric vehicles and 38% gas-powered vehicles, all of which
21 would be purpose-built vehicles, to be deployed over a period of eight years; and (3) a No-Action
22 alternative, consisting of up to 165,000 purpose-built vehicles with a minimum of 10% electric
23 vehicles. AR 12844.

24 USPS did not consider alternatives with a greater percentage of electric vehicles, such as
25 80% to 95%. USPS also did not consider other potential alternatives that would include hybrid
26 vehicles, cargo bikes, small battery electric vehicles, or low-speed options. Instead, USPS limited

27 _____
28 ⁶ Plaintiffs RJN at Exh. E. (USPS, Press Release, “USPS Moves Forward with Awards to Modernize and Electrify the Nation’s Largest Federal Fleet” (Feb. 28. 2023)).

1 its consideration of alternatives to the proportion of electric and gas-powered vehicles that it had
2 already committed to in its December 2022 announcement, six months before releasing its Draft
3 SEIS for public comment.

4 Plaintiffs submitted comments criticizing the limited range of alternatives, USPS's failure
5 to take a "hard look" at various issues such as total cost of ownership, its failure to consider state
6 and local climate laws, plans and policies, and its failure to provide underlying data. AR 9890-
7 916, 10066-77.

8 On September 29, 2023, USPS published its SEIS. 88 Fed. Reg. 67,277 (Sept. 29, 2023).
9 The SEIS did not evaluate any alternatives besides those included in the Draft SEIS. Rather,
10 without adequate explanation, USPS simply selected its SEIS Preferred Alternative of procuring a
11 combination of commercial and custom vehicles, with a mix of 62% battery electric vehicles and
12 38% gas-powered vehicles—the exact same allocation of vehicles that USPS had announced it
13 would acquire nine months earlier. AR 8980. Under this allocation, USPS's fleet of more than
14 210,000 delivery vehicles would have a total of 68.6% gas-powered vehicles and only 31.4%
15 electric vehicles after the USPS acquisition is complete. AR 9840. USPS did not commit to
16 acquiring only zero-emission vehicles after 2026, as it had previously announced.

17 The SEIS failed to present the public with complete information regarding USPS's
18 consideration of alternative vehicle allocations. Notably, USPS failed to explain why it
19 considered only an allocation of 62% battery electric vehicles and 38% gas-powered vehicles. AR
20 8996-97. Instead, it relied upon generalized statements about the urgent need to replace its
21 outdated vehicles with "some" gas-powered vehicles, route suitability for electric vehicles, and
22 financial considerations as factors that limited the deployment of electric alternatives. But such
23 rationale was largely contradicted by other portions of the Draft SEIS where USPS acknowledged
24 that electric vehicles are suitable for more than 90% of its routes. AR 12845. Moreover, USPS did
25 not disclose adequate information on how the \$3 billion provided under the Inflation Reduction
26 Act would be spent, or the cost assumptions that would purportedly preclude the purchase of a
27 greater percentage of zero-emission vehicles. The SEIS's financial analysis was further skewed
28

1 by an inexplicable shift from the total cost of ownership model used in earlier NEPA documents
2 to an oversimplified analysis of acquisition costs.

3 Despite Plaintiffs' repeated calls to do so, the SEIS also failed to fully evaluate the
4 Program's environmental justice impacts and its inconsistency with state and local laws and plans
5 that require reductions in GHG emissions and a transition to zero-emission vehicles.

6 EPA commented on the SEIS on October 30, 2023, criticizing USPS's analysis and
7 recommending that USPS provide greater disclosure in its revised ROD, consider alternatives that
8 would exceed the minimum battery electric vehicle commitment of 62%, and strengthen its
9 environmental justice commitments. AR 9824-31. EPA also disagreed with USPS's abandonment
10 of the best practice of using a total cost of ownership analysis. AR 9826-28. Notably, EPA stated
11 that "the Final SEIS does not clearly articulate what is motivating [USPS]'s vehicle acquisition
12 strategy." AR 9826. EPA also stated, "the Final SEIS does not provide sufficient information for
13 the public to understand whether [USPS] is selecting the most cost-effective mix of vehicles," *id.*,
14 and route optimization efforts do not explain "why [USPS] is proposing to purchase 40,250
15 [internal combustion engine] vehicles," resulting in a total of 140,250 gas-powered vehicles in
16 USPS's fleet, AR 9830.

17 On December 5, 2023, USPS signed and certified the revised ROD based on the analyses
18 and findings from the EIS and SEIS, selecting the SEIS Preferred Alternative, and finalizing the
19 NEPA process for its Program. AR 8967, 8969. USPS published its revised ROD in the Federal
20 Register on December 11, 2023. 88 Fed. Reg. 85,936 (Dec. 11, 2023).

21 **VIII. Procedural History of this Litigation**

22 On April 28, 2022, the NGO Plaintiffs filed a Complaint challenging the ROD. 3:22-cv-
23 02576-RFL ("CleanAirNow Dkt.") 1. Also, on April 28, 2022, Government Plaintiffs filed a
24 Complaint challenging the ROD, and filed a First Amended Complaint on June 10, 2022. Gov't
25 Dkt. 1, 79. The cases were related on May 10, 2022. CleanAirNow Dkt. 10; Gov't Dkt. 27. The
26 Court granted Defendant Oshkosh's motion to intervene in February 2023. CleanAirNow Dkt. 64;
27 Gov't Dkt. 122.

28

1 the court “may set aside [USPS’s] action only if it is ‘arbitrary, capricious, an abuse of discretion,
2 or otherwise not in accordance with law.’” *Id.* (citing 5 U.S.C. § 706(2)(A)).

3 Under this standard, the court must determine whether the agency “examined the relevant
4 data and articulated a satisfactory explanation for its action including a rational connection
5 between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State*
6 *Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (cleaned up). An agency action is considered
7 arbitrary and capricious “only if the agency relied on factors Congress did not intend it to
8 consider, ‘entirely failed to consider an important aspect of the problem,’ or offered an
9 explanation ‘that runs counter to the evidence before the agency or is so implausible that it could
10 not be ascribed to a difference in view or the product of agency expertise.’” *Lands Council v.*
11 *McNair*, 537 F.3d 981, 987 (9th Cir. 2008), *overruled in part on other grounds by Winter v. Nat.*
12 *Res. Def. Council, Inc.*, 555 U.S. 7 (2008).

13 A reviewing court may find that the agency’s decision was arbitrary and capricious if the
14 agency has not “taken a ‘hard look’ at the environmental consequences of its proposed action.”
15 *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1211 (9th Cir. 1998) (citation
16 omitted). The Ninth Circuit applies a rule of reason that asks whether an impact statement
17 “contains a ‘reasonably thorough discussion of the significant aspects of the probable
18 environmental consequences,’” *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1519 (9th
19 Cir. 1992), and whether the statement’s “form, content and preparation foster both informed
20 decision-making and informed public participation,” *State of Cal. v. Block*, 690 F.2d 753, 761
21 (9th Cir. 1982). Thus, in the APA context, “summary judgment is an appropriate mechanism for
22 deciding the legal question of whether the agency could reasonably have found the facts as it
23 did.” *Occidental Eng’g Co. v. I.N.S.*, 753 F.2d 766, 770 (9th Cir. 1985).

24 ARGUMENT

25 I. Plaintiffs Have Standing to Challenge the EIS and Record of Decision

26 As an initial matter, Plaintiffs satisfy the constitutional standing requirements to bring this
27 action, which apply equally to both private and government plaintiffs: (1) they have suffered a
28 concrete and particularized “injury in fact”; (2) the injury is “fairly traceable” to the challenged

1 actions of the defendant; and (3) it is “‘likely,’ as opposed to merely ‘speculative,’ that the injury
2 will be ‘redressed by a favorable decision.’” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61
3 (1992). Additionally, where, as here, plaintiffs challenge compliance with a statutory provision
4 under the APA, they must show that their injury “falls within the ‘zone of interests’ that the
5 statute was designed to protect.” *Douglas County v. Babbitt*, 48 F.3d 1495, 1499 (9th Cir. 1995).
6 Under NEPA, this “zone of interests” encompasses the protection of the environment, which is
7 threatened by USPS’s unlawful revised ROD. *See id.* The presence of one party with standing is
8 sufficient to satisfy Article III. *Rumsfeld v. Forum for Acad. and Institutional Rights, Inc.*, 547
9 U.S. 47, 52 n. 2 (2006).

10 **A. Plaintiffs Have Been Injured By USPS’s NEPA Violations**

11 First, Plaintiffs have suffered a concrete procedural injury arising from USPS’s violations
12 of NEPA. Plaintiffs asserting such an injury must show both that the procedures in question
13 protect plaintiffs’ concrete interests, and that it is reasonably probable that the challenged action
14 will threaten these interests. *Citizens for Better Forestry v. U.S. Dep’t of Agric.*, 341 F.3d 961,
15 969-70 (9th Cir. 2003). Plaintiffs clearly meet these requirements.

16 1. NEPA procedures are designed to protect Plaintiffs’ concrete interests

17 Here, USPS violated NEPA by irreversibly committing resources before even beginning
18 to review the environmental impacts of its action, by failing to adequately consider and analyze
19 alternatives, by failing to take the required “hard look” at the environmental consequences of its
20 action, and by failing to consider inconsistencies between its SEIS Preferred Alternative and
21 Government Plaintiffs’ laws and policies. Each of these procedural violations is sufficient to state
22 an injury in fact to Plaintiffs. *See Mumma*, 956 F.2d at 1514 (“[T]he right to have agencies
23 consider all reasonable alternatives before making a decision affecting the environment . . . is thus
24 one that Congress—by virtue of imposing NEPA’s procedural requirements—has
25 acknowledged.”); *Friends of the Earth v. U.S. Navy*, 841 F.2d 927, 931 (9th Cir. 1988)
26 (explaining that “failure to follow procedures designed to ensure that the environmental
27 consequences of a project are adequately evaluated” is an injury in fact).

28 Additionally, Government Plaintiffs have been “accorded a procedural right” under NEPA

1 because the statute provides that “‘State, and local agencies, which are authorized to develop and
 2 enforce environmental standards,’ may comment on the proposed federal action.” *Douglas*
 3 *County v. Babbitt*, 48 F.3d 1495, 1501 (9th Cir. 1995); 42 U.S.C. § 4332(2)(C). Each of the
 4 Government Plaintiffs is authorized to develop and enforce environmental standards, and have in
 5 fact developed stringent policies and laws to improve and protect the air quality of their
 6 respective jurisdictions, in accordance with state and local laws and the federal Clean Air Act. *See*
 7 *supra* at pp. 6-7; Decl. of Christopher M. LaLone (“LaLone Decl.”), ¶¶ 5-8, 10, 19-29 (describing
 8 State of New York’s Climate Law, emissions standards, regulations, and air quality attainment
 9 plans). Tailpipe emissions resulting from USPS’s gas-powered vehicle acquisition threaten to
 10 cause the very harm addressed by Government Plaintiffs’ plans and policies to limit such
 11 emissions. LaLone Decl. ¶¶3-4, 9-15, 20, 24-26, 29-55; *see, e.g.*, N.M. Admin. Code §§ 20.2.1.1 -
 12 20.2.101.115.

13 2. USPS’s NEPA violations threaten Plaintiffs’ concrete interests

14 USPS’s violations will result in air pollution and GHG emissions that will threaten
 15 Plaintiffs’ economic, recreational, proprietary, aesthetic, and health interests. *See Pub. Citizen v.*
 16 *Dep’t of Transp.*, 316 F.3d 1002, 1016 (9th Cir. 2003) (noting that “credible threats” include
 17 factors such as “increased traffic, pollution, and noise” and “increased auto emissions”), *rev’d on*
 18 *other grounds*, 541 U.S. 752 (2004). As demonstrated by the declarations of Mary Reinhart,
 19 Jennifer Molidor, Rayan Makarem, Christopher LaLone, and Sarah Johnson, Plaintiffs’ residents
 20 and members live, work, and recreate near major USPS depots that use the postal delivery
 21 vehicles that will be replaced by the Program. *See Public Citizen*, 316 F.3d at 1015 (noting the
 22 plaintiff organization’s members live and work in areas that would be affected by increased truck
 23 traffic that would, in turn, cause them to be exposed to emissions that would affect their health).

24 Further, because Government Plaintiffs have “an interest independent of and behind the
 25 titles of [their] citizens, in all the earth and air within [their] domain,” they are “entitled to special
 26 solicitude in [the] standing analysis.” *Massachusetts v. E.P.A.*, 549 U.S. 497, 518-20 (2007)
 27 (quoting *Georgia v. Tennessee Copper Co.*, 206 U.S. 230, 237 (1907)); *see also Sierra Forest*
 28 *Legacy v. Sherman*, 646 F.3d 1161, 1178 (9th Cir. 2011) (a political body may sue to protect its

1 proprietary interests); *City of Sausalito v. O'Neill*, 386 F.3d 1186, 1198 (9th Cir. 2004) (including
2 among such interests the “ability to enforce land-use and health regulations” and “protecting its
3 natural resources from harm”). Plaintiffs’ “well-founded desire to preserve [their] sovereign
4 territory” supports standing in cases implicating environmental harms such as air pollution and
5 climate change. *Massachusetts*, 549 U.S. at 519-20.

6 Here, USPS’s decision to include a substantial number of gas-powered vehicles in its fleet
7 threatens Government Plaintiffs’ proprietary interests by giving rise to unnecessary GHG and
8 criteria pollutant emissions, which will contribute to climate change and damage to Plaintiffs’ air
9 quality, parks, public health, and other resources. For example, higher temperatures caused by
10 GHG will lead to a rise in sea levels along the California coast, increased wildfires and flooding,
11 and diminished fog, resulting in “significant adverse and costly impacts on the [California] State
12 Park System.” Decl. of Jay Chamberlin (“Chamberlin Decl.”), ¶¶7-15. Pollution from internal
13 combustion vehicles also poses significant risks to New York City residents, which leads to
14 increased hospitalization and emergency room costs for the city. Decl. of Sarah Johnson
15 (“Johnson Decl.”), ¶¶8-11.

16 **B. Plaintiffs Meet the Causation Element of Standing.**

17 Plaintiffs meet the causation requirement for standing, which is relaxed because Plaintiffs
18 have established a concrete injury under NEPA. *See WildEarth Guardians v. U.S. Dep’t of Agric.*,
19 795 F.3d 1148, 1154 (9th Cir. 2015) (citing *W. Watersheds Project v. Kempthorne*, 632 F.3d 472,
20 485 (9th Cir. 2011)).

21 First, Plaintiffs’ injury is “fairly traceable to the challenged activity of the defendant.” *See*
22 *Lujan*, 504 U.S. at 560. There is a “reasonable probability” that as a result of its failure to comply
23 with the law and adequately consider the environmental impacts of its decision, USPS’s Program
24 will result in increased pollution that will harm Government Plaintiff in their role as sovereigns,
25 landowners, regulators, and health care administrators, as well as “increased pollution and
26 adverse health effects to [NGO Plaintiffs] and [their] members.” *Public Citizen*, 316 F.3d at 1017-
27 18 (finding causation satisfied because denying the petition would result in trucks immediately
28 beginning to operate in the United States, thereby “emitting pollutants that contaminate the air

1 Public Citizen’s members breathe and that could potentially cause them myriad health effects.”).
 2 Here, unnecessary emissions of GHG and other air pollutants will directly cause harm to
 3 Plaintiffs’ interests. Chamberlin Decl. ¶¶7-15; Johnson Decl. ¶¶10-12, 13-14, 16-17; Decl. of
 4 Jennifer Molidor ¶¶5-11, Decl. of Mary Reinhart ¶¶5-12; Decl. of Rayan Makarem ¶¶7-9; Decl.
 5 of Hadrien Dykiel ¶¶5-7; Decl. of Jody Isenberg ¶¶8-11; Decl. of Huda Fashho ¶¶4. *See Citizens*
 6 *for Better Forestry v. U.S. Dep’t of Agric.*, 341 F.3d 961, 972 (9th Cir. 2003) (explaining that
 7 plaintiffs in a NEPA challenge “need only establish ‘the reasonable probability of the challenged
 8 action’s threat to [their] concrete interest”).

9 C. Plaintiffs Meet the Redressability Element of Standing.

10 Finally, Plaintiffs satisfy the redressability element—that it is “‘likely,’ as opposed to
 11 merely ‘speculative,’ that the injury will be ‘redressed by a favorable decision.’” *Lujan*, 504 U.S.
 12 at 561 (citations omitted). In procedural injury cases, it is unnecessary to “show that further
 13 analysis by the government would result in a different conclusion;” plaintiffs need only show that
 14 “the [agency’s] decision *could be influenced* by the environmental considerations that [the
 15 relevant statute] requires an agency to study.” *See Public Citizen*, 316 F.3d at 1019. Should this
 16 Court vacate the SEIS and revised ROD and require a proper NEPA review, that review could
 17 influence USPS’s decision to proceed with the Preferred Alternative. Accordingly, Plaintiffs have
 18 standing to challenge USPS’s action.

19 II. There is No Genuine Dispute That USPS Violated NEPA by Awarding the Next 20 Generation Delivery Vehicle Acquisition Contract Prior to Environmental Review

21 USPS violated NEPA by performing its environmental review six years after it began the
 22 Program, signing a contract and committing almost half a billion dollars to it, and making
 23 multiple delivery orders and commitments before completing NEPA review. “Proper timing is
 24 one of NEPA’s central themes.” *Save the Yaak Comm v. Block*, 840 F.2d at 718 (9th Cir. 1988).
 25 Agencies must “integrate the NEPA process with other planning and authorization processes at
 26 the *earliest reasonable time* to ensure that agencies consider environmental impacts in their
 27 planning and decisions, to avoid delays later in the process, and to head off potential conflicts.”
 28 40 C.F.R. §1501.2(a) (emphasis added). An environmental assessment “must be ‘prepared early

1 enough so that it can serve practically as an important contribution to the decisionmaking process
2 and will not be used to rationalize or justify decisions already made.” *Save the Yaak Comm.*, 840
3 F.2d at 718 (quoting 40 C.F.R. § 1502.5). Accordingly, an EIS should “be prepared at the
4 feasibility analysis (go-no go) stage and may be supplemented at a later stage if necessary.”
5 *Metcalf*, 214 F.3d at 1142.

6 The Ninth Circuit has held that NEPA review is untimely where an agency has already
7 made an “irreversible and irretrievable commitment of resources” to an option. *Conner v.*
8 *Burford*, 848 F.2d 1441, 1446 (9th Cir. 1988). Awarding a contract for a project and beginning
9 performance of it before NEPA review weighs in favor of finding the review unlawful. *See*
10 *Metcalf*, 214 F.3d at 1144. Additionally, where the agency’s commitment of time and money is so
11 significant that it limits its options and slants environmental review, the agency is considered to
12 have irretrievably committed resources. *Id.*; *see also WildWest Inst. v. Bull*, 547 F.3d 1162, 1169
13 (9th Cir. 2008); *Save the Yaak Comm.*, 840 F.2d at 718 (“After major investment of both time and
14 money, it is likely that more environmental harm will be tolerated.”). Here, USPS’s contract, and
15 the significant steps USPS took in furtherance of the Program, sealed the fate of the
16 environmental review that followed: they foreclosed certain alternatives from genuine
17 consideration and irreversibly committed USPS to a course of action with financial and practical
18 consequences.

19 **A. USPS Contracted Away Its Ability to Consider Reasonable Alternatives**

20 Before USPS even started its NEPA review, it had already signed a contract with Oshkosh
21 and promised to purchase at least 50,000 vehicles. *Metcalf*, 214 F.3d at 1143 (“The ‘point of
22 commitment’ in this case came when NOAA signed the contract . . . and then worked to
23 effectuate the agreement. It was at this juncture that it made an ‘irreversible and irretrievable
24 commitment of resources.’”). Specifically, [REDACTED]
25 [REDACTED]
26 [REDACTED], and in February 2021, *six months* before the Draft EIS was released, publicly announced the
27 contract award to Oshkosh. Plaintiffs RJN at Exh. G; AR 32. USPS’s commitment to such a large
28 contractual obligation clearly indicates that its mind was made up long before it began

1 environmental review. *See Metcalf*, 214 F.3d at 1143 (agreement was strong evidence that
2 agencies made the decision to support a proposal before finalizing the environmental assessment).
3 NEPA, however, requires agencies to consider the environmental impacts of their actions before
4 “the die [is] cast.” *Id.* at 1144; *see also Conner*, 848 F.2d at 1446.

5 Even if USPS nominally conditioned its contract upon the completion of NEPA review,
6 such a disclaimer was a mere formality for two reasons. First, the contract and large initial order
7 obligated Oshkosh to begin substantial preparations for its completion, for which USPS would
8 ultimately have to pay even if it later modified its order. For example, [REDACTED]

9 [REDACTED]
10 [REDACTED]
11 [REDACTED] And second, the existence of the contract and initial order influenced the
12 results of the environmental review that followed, since the review would ultimately need to align
13 with the contractual actions USPS had taken in the real world. USPS could and should have
14 undertaken an environmental review before committing taxpayer resources to the project, and its
15 failure to do so violates NEPA.

16 In addition to contractually binding itself, the large minimum order quantity demonstrates
17 the strength of USPS’s commitment to work with Oshkosh. In contracting and substantially
18 committing to Oshkosh before assessing the environmental impacts of the decision, USPS
19 violated NEPA. *See Save the Yaak Comm.*, 840 F.2d at 718-19.

20 **B. USPS’s Significant Steps in Furtherance of Its Project Prior to Finalizing**
21 **the ROD Predetermined the Results of Its Environmental Review**

22 In addition to entering a contract with Oshkosh, USPS took significant steps in
23 furtherance of the Proposed Action and “worked to effectuate the agreement” with Oshkosh
24 before conducting NEPA review, which ultimately created a slanted environmental review.
25 *Metcalf*, 214 F.3d at 1143. USPS issued an initial task order for up to \$482 million for Oshkosh to
26 begin preparations for production of the vehicles and made its first payment on the contract in
27 February 2021. AR 358; CleanAirNow Dkt. 35-2, ¶76 (“Oshkosh admits that, in February 2021,
28 the Postal Service made an initial task-order for engineering and factory preparation costs and

1 that this task-order was published before the publication of the draft EIS.”). The contract directed
2 Oshkosh to move forward while the NEPA review was being conducted, so Oshkosh selected its
3 new 900,000-square-foot production facility and began to retrofit it by “building out its facility,
4 installing manufacturing equipment and tooling, and building test vehicles.” CleanAirNow Dkt.
5 35-1, ¶ 13. [REDACTED]

6 [REDACTED]
7 [REDACTED] In December 2022, USPS announced it expected to acquire at
8 least 66,000 electric vehicles as part of a 106,000-vehicle acquisition plan. Plaintiffs RJN at Exh.
9 D.

10 In February 2023, after USPS had announced it was completing a Supplemental EIS but
11 had not yet issued it, USPS again undermined its NEPA analysis by awarding two additional
12 contracts. [REDACTED]

13 [REDACTED] Even to the extent USPS could alter or terminate all of
14 these contracts down the road due to its NEPA findings, it remains partially bound by them.

15 Regardless of the NEPA findings, [REDACTED]

16 [REDACTED] Moreover, [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 USPS’s NEPA review was untimely at the point it had already paid for a specific location
23 for the contract’s performance and lost flexibility to change or cancel its orders without incurring
24 substantial costs. *See Lathan v. Volpe*, 455 F.2d 1111, 1121 (9th Cir. 1971) (holding that the
25 agency made an irretrievable commitment of resources by approving the proposed location of an
26 interstate freeway and authorizing property acquisitions, even though the final approval of design
27 plans had not yet been given, because flexibility had been lost and more environmental harm
28 would be tolerated once the planning process reached the later stages). Because USPS had already

1 started accepting substantial performance under the contract, its environmental review was
2 prejudiced toward tolerating more harm. *See Save the Yaak Comm.* 840 F.2d at 718 (NEPA
3 review untimely where the construction of road had already begun by the time environmental
4 assessment was done).

5 USPS conceded that its consideration of certain alternatives was compromised because of
6 the commitments it had already made to Oshkosh and other vehicle manufacturers. [REDACTED]

7 [REDACTED]
8 [REDACTED]
9 [REDACTED] For that reason, a 90% electric vehicle scenario was not
10 presented as an alternative in the SEIS. USPS's prior contractual commitments prevented it from
11 fully considering an environmentally preferred alternative, and as a result, that alternative was not
12 part of the SEIS. USPS thus acted in a way that "[l]imit[ed] the choice of reasonable
13 alternatives," in clear violation of NEPA. *See* 40 C.F.R. §§ 1502.2(f), 1506.1(a)(2).

14 Additionally, by the time the agency began considering environmental impacts, it had
15 already spent six years reviewing prototypes and evaluating vendors, spending significant
16 resources on a process that resulted in its contract with Oshkosh. As a result, the environmental
17 review was little more than a "post hoc rationalization" for a decision that had already been made:
18 Oshkosh—with its limited ability to produce electric vehicles—would build the Next Generation
19 Delivery Vehicle fleet. *Nat'l Audubon Soc'y v. Dep't of the Navy*, 422 F.3d 174, 199 (4th Cir.
20 2005) (agency's post hoc rationalization was evidence of its failure to comprehensively
21 investigate the environmental impact of its decisions).

22 This was not akin to the situation in *Blue Mountains Biodiversity Project v. Jeffries*, 72
23 F.4th 991, 998-99 (9th Cir. 2023), where the Ninth Circuit held that an agency did not make an
24 irretrievable commitment of resources because the agency reserved the right to terminate a
25 contract at its convenience, had not issued a notice to proceed, did not make any payments to the
26 contractor, and did not engage in "post hoc rationalization." Here, USPS was required to make
27 payments to Oshkosh even if it later altered its purchase plans, the contract parameters limited its
28 analysis of a higher electric vehicle percentage, and USPS ultimately selected its alternatives to

1 conform with the contract it had already signed. *See Thomas v. Peterson*, 753 F.2d 754, 757-60
2 (9th Cir. 1985) (holding the EIS would be untimely where the Forest Service wanted to build a
3 road that would facilitate timber sales and then prepare an EA/EIS to analyze the environmental
4 impact of the timber sales because “building the road swings the balance decidedly in favor of
5 timber sales”). Throughout the vehicle acquisition process, USPS assumed that its NEPA review
6 would ratify the decisions it had already made and contracts it had signed. That is irreconcilable
7 with NEPA’s intent that environmental study *precede and inform* the binding commitments an
8 agency makes.

9 **III. USPS Failed to Analyze Reasonable and Feasible Alternatives**

10 **A. USPS’s Failure to Consider Reasonable Alternatives Consisting of More** 11 **Than 62% Electric Vehicles Was Arbitrary and Capricious.**

12 USPS violated NEPA by failing to analyze reasonable and feasible alternatives to its SEIS
13 Preferred Alternative—including any alternative vehicle mix with more than 62% and less than
14 100% electric or other zero-emission vehicles. NEPA requires agencies to consider “a reasonable
15 range of alternatives to the proposed agency action . . . that are technically and economically
16 feasible, and meet the purpose and need of the proposal.” 42 U.S.C. § 4332(2)(C)(iii); *see also id.*
17 at § 4332(2)(F) (agencies must “study, develop, and describe technical and economically feasible
18 alternatives”). An agency must discuss each of the alternatives that it considered in “detail . . . so
19 that reviewers may evaluate their comparative merits,” 40 C.F.R. § 1502.14(b), and must “briefly
20 discuss the reasons” for the elimination of certain alternatives “from detailed study,” *id.* at
21 § 1502.14(a).

22 Here, the purpose and need of the Program is to replace old delivery vehicles with
23 “vehicles with more energy-efficient powertrains, updated technology, reduced emissions,
24 increased cargo capacity and improved loading characteristics, improved ergonomics and carrier
25 safety, and reduced maintenance costs.” AR 18, 8979. Acquisition of a greater percentage of
26 electric or other zero-emission vehicles would amply meet this purpose and need and result in
27 fewer environmental impacts than USPS’s Preferred Alternative. AR 9024-30.

28 While an EIS is not required to “consider an infinite range of alternatives,” it must

1 consider “reasonable or feasible ones.” *City of Carmel-by-the-Sea v. U.S. Dep’t of Transp.*, 123
2 F.3d 1142, 1155 (9th Cir. 1997); 40 C.F.R. § 1502.14(a)-(c). The “existence of reasonable but
3 unexamined alternatives renders an EIS inadequate.” *Friends of Southeast’s Future v. Morrison*,
4 153 F.3d 1059, 1065 (9th Cir. 1998). Indeed, USPS’s own regulations recognize that the
5 alternatives analysis is “vitaly important,” and require those preparing an environmental impact
6 statement to “[e]xplore and evaluate *all* reasonable alternatives . . . and briefly discuss the
7 reasons for eliminating any alternatives.” 39 C.F.R. § 775.11(c)(5) (emphasis added).

8 USPS’s alternatives analysis failed to comply with NEPA because it did not include
9 reasonable and feasible alternatives. This failure has significant consequences for the
10 environment and public health: ignoring alternatives with a greater percentage of zero-emission
11 vehicles could result in excessive GHG emissions from tens of thousands of gas-powered vehicles
12 and significant amounts of otherwise avoidable criteria pollution in neighborhoods and
13 communities. AR 10066.

14 Here, many commenters proposed alternatives consisting of more than 62% electric
15 vehicles. Both Government Plaintiffs and NGO Plaintiffs, among others, emphasized that USPS
16 should consider 80% and 95% electric vehicle alternatives, and pointed out that approximately
17 95% of USPS routes can be completed on a single electric battery charge. AR 9890, 10066. EPA
18 also recommended as the preferred alternative “the greatest percentage of deployment of [electric
19 Next Generation Delivery Vehicles] as is economically feasible.” AR 4908; *see also* AR 9918
20 (NGO comment urging USPS to reach the “fleet’s maximum feasible electrification potential of
21 90 percent”), 11594 (Earthjustice comment urging USPS to consider an “alternative that features
22 the maximum number of BEVs compatible with current postal routes”).

23 Expert commenters demonstrated that acquisition of greater numbers of electric vehicles
24 is feasible. The California Air Resources Board, for example, listed the many models of available
25 electric vehicles ordered by large companies such as Amazon (which purchased 100,000 zero-
26 emission delivery vans from Rivian), Royal Mail, UPS, and FedEx, and stated that USPS should
27 consider combinations of vehicles and charging strategies that would result in higher allocations
28 of electric vehicles, rather than committing to a single vehicle type or battery size. AR 11574-89;

1 *see also* AR 9844-45, 10082-83, 11609, 11688. A coalition of non-governmental organizations
2 submitted evidence that 4.3 million electric vehicles are expected to be produced by 2026, and
3 that the market for zero-emission vehicles—especially cargo vans and electric trucks—is
4 expanding rapidly. AR 9924-25; *see also* AR 11676, 10082-83.

5 USPS’s failure to consider and discuss reasonable alternatives recommended by EPA,
6 State and local governments, and non-governmental organizations in the SEIS violated NEPA.
7 Courts have found an alternatives analysis inadequate when agencies failed to consider
8 reasonable alternatives proffered by commenters. *See Nat. Res. Def. Council, Inc. v. Evans*, 168
9 F. Supp. 2d 1149, 1160 (N.D. Cal. 2001) (agency did not explain failure to address commenters’
10 proposed alternatives or offer own appropriate alternatives), *order aff’d in part, vacated in part*,
11 316 F.3d 904 (9th Cir. 2003); *Conservation Council for Haw. v. Nat’l Marine Fisheries Serv.*, 97
12 F. Supp. 3d 1210, 1238 (D. Hawai’i 2015) (“general and cursory” rejection of commenters’
13 proposed alternatives violated NEPA). USPS did not consider any of the above reasonable
14 alternatives, either “in detail” or even “briefly” as required under NEPA. 40 C.F.R. § 1502.14(a),
15 (b); *see also* 39 C.F.R. § 775.11(c)(5).

16 Rather than evaluate reasonable alternatives, USPS improperly limited the alternatives to
17 those that it had already publicly announced and supported through pre-existing contractual
18 commitments. Specifically, across both the EIS and SEIS, USPS considered two No Action
19 alternatives and only two additional allocations of electric vehicles. The No Action alternatives
20 consist of: (1) the original EIS No Action alternative of acquiring no new delivery vehicles; and
21 (2) the SEIS No Action alternative of acquiring only 10% electric vehicles and 90% gas-powered
22 vehicles.⁷ USPS considered only two alternative allocations of electric vehicles, despite public
23 comments urging USPS to consider more zero-emission alternatives: (1) the SEIS Preferred
24 Alternative, a vehicle mix of 62% electric and 38% gas-powered vehicles, to be deployed over a
25 period of either six or eight years, and (2) a 100% electric vehicle alternative, consisting of either
26 Next Generation Delivery Vehicles, or off-the-shelf left-hand-drive vehicles, which USPS

27 _____
28 ⁷ This alternative was presented as the preferred action alternative in the original EIS but
considered as the No Action alternative in the SEIS.

1 rejected in the original EIS. AR 8994, 37-44. USPS also considered and rejected purchasing
2 100% gas-powered off-the-shelf vehicles. AR 17-18. USPS refused to consider reasonable
3 alternatives with more than 62% electric vehicles, which could result in further improved air
4 quality and reduced GHG emissions. Instead, it selected the SEIS Preferred Alternative, which
5 consists of the exact same vehicle allocation that USPS announced before even releasing its Draft
6 SEIS. AR 8996-9000.

7 The D.C. Circuit Court of Appeals addressed a similar case in *Union Neighbors United,*
8 *Inc. v. Jewell*, 831 F.3d 564 (D.C. Cir. 2016), concerning the U.S. Fish and Wildlife Service’s
9 (“Service”) EIS for a wind energy facility which had potential impacts on endangered bats. Of
10 seven potential alternatives, the Service considered four in depth: (1) the No Action alternative;
11 (2) an alternative with a designated “cut-in speed,” restricting the speed at which turbines would
12 begin rotating to at least 5.0 meters per second (“m/s”) during the bats’ most active periods, and
13 taking 300 bats; (3) the “proposed action” with a designated “cut-in speed” of up to 6.0 m/s and
14 taking 26 bats; and (4) a maximally restricted alternative of shutting down all turbines at night
15 and taking no bats, but resulting in \$216.5 million in lost revenues. *Id.* at 572-73. The Service
16 found the proposed action would not cause significant impacts and declined to consider plaintiff’s
17 suggested cut-in speed of 6.5 m/s to further reduce bat mortality, arguing there were “infinite
18 combinations of cut-in speeds higher than the proposed action” and the existence of the
19 maximally restricted alternative made analysis of other variations unnecessary. *Id.* at 573. The
20 Court disagreed. It found that the Service “failed to consider a reasonable range of alternatives
21 because it did not consider any reasonable alternative that would be economically feasible while
22 taking fewer bats than [the proposed action].” *Id.* at 576. Similarly, here, the SEIS and revised
23 ROD violate NEPA because USPS ignored reasonable alternatives that would be economically
24 feasible, could result in fewer environmental impacts, and would better meet USPS’s stated
25 purpose and need to acquire vehicles with more energy-efficient powertrains, reduced emissions,
26 and reduced maintenance costs.

27 Indeed, USPS’s failure to consider the proposals set forth in public comments resulted, at
28 least in part, from USPS’s improper pre-commitment of resources to its Preferred Alternative. As

1 stated above, [REDACTED]

2 [REDACTED]

3 [REDACTED] USPS thus illegally rejected consideration of

4 potential alternatives, “end[ing] its inquiry at the beginning,” because it had already committed to

5 its Preferred Alternative before completing NEPA review. *Block*, 690 F.2d at 767 (citation

6 omitted).

7 Moreover, some of the alternatives that USPS considered in the EIS and SEIS represented

8 merely a “paper exercise” that does not comply with NEPA’s mandate to consider reasonable

9 alternatives. *Or. Nat. Desert Ass’n v. Bureau of Land Mgmt.*, 625 F.3d 1092, 1124 (9th Cir.

10 2010). Specifically, USPS viewed certain alternatives, including the 100% electric vehicle

11 alternative discussed in the original EIS and ROD, as merely “hypothetical.” In response to

12 commenters who made this point, USPS claimed that the “hypothetical maximums” allowed it to

13 “understand the full potential environmental impacts at either end of the Proposed Action’s range

14 of possible vehicle mixes,” and on this basis, rejected commenters’ requests to consider mid-

15 range vehicle mixes. AR 264 (declining to “expand the EIS by adding calculations for various

16 potential mixes within the set range”).

17 USPS’s statement underscores that it never truly considered a 100% electric vehicle

18 alternative, but instead used this “hypothetical” alternative as an excuse to omit consideration of

19 any alternative with a greater percentage of electric vehicles than the predetermined Preferred

20 Alternative. USPS’s claims that electric vehicles cannot operate for 12,500 routes, and repeated

21 statements in the SEIS that it was “necessary to consider only Alternatives that include the

22 procurement of some [gas-powered] vehicles”—which do not take into account that tens of

23 thousands of gas-powered vehicles will remain in service—only highlight that USPS failed to

24 meaningfully consider a 100% electric vehicle alternative. AR 8995-96. USPS cannot be credited

25 for considering alternatives with more than 62% electric vehicles when the only such alternative

26 included in its EIS, the 100% electric vehicle alternative, was summarily rejected as infeasible.

27 *Cf. Union Neighbors United*, 831 F.3d at 576 (agency violated NEPA where the only alternative

28 to the preferred alternative which would take fewer endangered bats was found economically

1 infeasible). USPS's rejection of a "hypothetical" 100% electric vehicle alternative also does not
2 excuse its failure to consider reasonable alternatives with more than 62% zero-emission vehicles.

3
4 **B. USPS's Stated Reasons for Failing to Consider Additional Alternatives Are Arbitrary and Capricious.**

5 USPS listed the following "consideration factors" as reasons for limiting its review of
6 alternatives: (1) an urgent need to replace its aging and increasingly unreliable vehicles in a cost-
7 and time-efficient manner; (2) route suitability; and (3) financial considerations, which require
8 USPS to consider only alternatives that include the procurement of some gas-powered vehicles.
9 AR 8994-96. But these vague and conclusory statements do not justify a failure to consider
10 alternatives with an electric vehicle mix above 62%.

11 First, even to the extent that USPS has demonstrated an urgent need to replace its existing
12 postal delivery vehicles, USPS has not explained how or why this urgent need limits the
13 percentage of electric vehicles to 62%. USPS gives only a vague explanation in the SEIS that
14 some gas-powered vehicles must be considered because of "the time needed to install necessary
15 infrastructure, the fact that over the near-term [commercial off-the-shelf] vehicles can be obtained
16 at a faster pace than the purpose-built [Next Generation Delivery Vehicles,] and that the
17 [commercial off-the-shelf electric vehicle] market is currently limited." AR 8994-95. The
18 administrative record lacks any support for these statements and provides no grounds for limiting
19 the share of electric vehicles to 62% on their basis.⁸ Moreover, the record contains ample contrary
20 evidence regarding the availability of electric vehicles, including commercial off-the-shelf
21 models, that USPS did not address. *See supra* at pp. 27-28.

22 Second, with respect to route suitability, USPS conceded that more than 90% of its routes
23 could be served by an electric vehicle on a single charge. AR 8995. And in fact, the USPS
24 Inspector General found that only 1.5% of USPS routes are longer than 70 miles. AR 10070; *see*
25 *also* Plaintiffs RJN at Exh. C-8. Route suitability therefore is not a valid justification for refusing

26
27 ⁸ Administrative records typically include "internal comments, draft reports, inter- or
28 intra-agency emails, revisions, memoranda, or meeting notes" which "inform an agency's final
decision." *Institute for Fisheries Resources v. Burwell*, 2017 WL 89003 at *1 (N.D. Cal. Jan. 10,
2017). There are few such documents in USPS's record.

1 to consider alternatives with higher percentages of electric or other zero-emission vehicles. *See*,
 2 *e.g.*, AR 10081.

3 Third, the EIS and SEIS relied on costs as a reason to limit alternatives, but failed to show
 4 how USPS arrived at its conclusions. Instead, USPS’s findings are “‘vague and conclusory
 5 statements’ unaccompanied by ‘supporting data.’” *Ctr. for Biological Diversity v. Nat’l Highway*
 6 *Traffic Safety Admin.*, 538 F.3d 1172, 1224 (9th Cir. 2008). As EPA noted in its comments on the
 7 final SEIS, the “SEIS include[d] very limited information” about Inflation Reduction Act
 8 subsidies and “did not provide analytic support for the selection of 62 percent vs a higher
 9 percentage of [electric] vehicles;” moreover, USPS’s “lack of detail [led] to seemingly
 10 contradictory statements” regarding vehicle costs. AR 9828. Even after being allocated \$3 billion
 11 from the Inflation Reduction Act to fund the purchase of zero-emission vehicles and
 12 infrastructure (*i.e.*, charging stations), USPS vaguely stated that it would consider only
 13 alternatives that include some gas-powered vehicles because the “upfront acquisition cost
 14 differential between [electric and gas-powered] vehicles remains significant...” and that electric
 15 vehicles and infrastructure cost approximately 86% more than gas-powered vehicles. AR 8996.
 16 USPS, however, did not provide “supporting data” for deciding to acquire as much as 38% gas-
 17 powered vehicles in the revised ROD. *Ctr. for Biological Diversity v. Nat’l Highway Traffic*
 18 *Safety Admin.*, 538 F.3d at 1224.⁹ USPS also failed to consider lower cost electric battery and
 19 charger options and opportunities for additional funding for zero-emission vehicles and
 20 infrastructure. AR 4978-79, 9932-36, 9849, 10064, 11607.

21 Finally, USPS claims that each of its alternatives comes with greater benefits than the
 22 current fleet. But that is insufficient to satisfy NEPA’s requirement to consider a reasonable range
 23 of alternatives, and discuss “each alternative considered in detail, including the proposed action,
 24 so that reviewers may evaluate their comparative merits.” 40 C.F.R. § 1502.14(b). Even to the
 25 extent the Preferred Alternative is an improvement over the outdated fleet, this does not absolve

26 ⁹ Indeed, the only discussion of costs [REDACTED]

27 [REDACTED] This does not meet NEPA’s mandate for agencies to foster
 28 “informed decision-making and informed public participation” in their environmental review.
Block, 690 F.2d at 767.

1 USPS of NEPA's requirements. *Cf. Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety*
2 *Admin.*, 538 F.3d at 1178 (agency may not relinquish its obligation to consider significance of
3 environmental impacts "simply because the [agency's] Final Rule may be an improvement" over
4 the previous standard). The fact that any of USPS's alternatives will produce less emissions than
5 the current fleet does not mean that the proffered range of alternatives is adequate.

6 In sum, the SEIS's alternatives analysis lacks support, is self-serving, was pre-determined,
7 and eliminates alternatives without revealing its reasons for doing so. *See O'Neill*, 386 F.3d at
8 1207 ("[T]he EIS must briefly discuss the reasons for their having been eliminated.").
9 Accordingly, the SEIS violates NEPA.

10 **IV. USPS Failed to Take a Hard Look at the Impacts of the Project**

11 In connection with a major action affecting the quality of the human environment such as
12 this one, USPS was required to prepare a "detailed statement" that "take[s] a 'hard look' at
13 environmental consequences. 42 U.S.C. § 4332(2)(C); *Earth Island Inst. v. U.S. Forest Serv.*, 351
14 F.3d 1291, 1300 (9th Cir. 2003); *Robertson*, 490 U.S. at 350. When undertaking its analysis, the
15 agency must also "insure the professional integrity, including scientific integrity, of the
16 discussions and analyses in environmental impact statements." 40 C.F.R. § 1502.24. At numerous
17 points throughout the process, USPS violated NEPA by failing to take a hard look at the direct,
18 indirect, and cumulative impacts of its decision.

19 **A. The SEIS's Analysis Lacked the Necessary Rigor That NEPA Requires**

20 The EIS and SEIS failed to support many of its conclusions with evidence and repeatedly
21 relied on unrevealed methodologies. NEPA requires USPS to "identify any methodologies used"
22 and "make explicit reference by footnote to the scientific and other sources relied upon for
23 conclusions in the [EIS]." 40 C.F.R. § 1502.24; 39 C.F.R. §§ 775.11(b)(6), 775.11(b)(8). "An
24 agency is entitled to wide discretion in assessing the scientific evidence, so long as it takes a hard
25 look at the issues and responds to reasonable opposing viewpoints." *Earth Island Inst.*, 351 F.3d
26 at 1301 (citing 40 C.F.R. § 1502.9(a)-(b)). While courts generally defer to an agency's analysis of
27 scientific data due to the "high level of technical expertise" it requires, *Marsh v. Or. Nat. Res.*
28 *Council*, 490 U.S. 360, 377 (1989), courts "must independently review the record in order to

1 satisfy themselves that the agency has made a reasoned decision based on its evaluation of the
2 evidence.” *Earth Island Inst.*, 351 F.3d at 1301

3 Here, the SEIS took an incoherent and inconsistent approach to total cost of ownership,
4 falling short of the standard for reasoned decisionmaking. In the EIS, USPS relied on a total cost
5 of ownership¹⁰ analysis to justify its decision. AR 308-11. While many commenters critiqued the
6 analysis in the EIS as failing to meet NEPA standards for technical rigor for a wide range of
7 reasons, no commenters argued that a total cost of ownership approach was improper. In the
8 SEIS, however, USPS completely abandoned the total cost of ownership approach and instead
9 focused solely on the upfront costs of vehicle acquisition, which does not account for the higher
10 long-term maintenance and operating costs of gas-powered vehicles. AR 8971-73. When
11 confronted with this unexplained reversal, USPS responded that it is required to follow several
12 authorities, including the federal laws and regulations overseeing USPS and the *USPS Supplying*
13 *Principles and Practices*. AR 8971-72. Yet none of the legal provisions USPS cited in the ROD
14 justifies relying solely on an upfront cost approach. In fact, USPS’s *Supplying Principles and*
15 *Practices* document notes that total cost of ownership analysis “exposes the hidden costs easily
16 overlooked during budget planning or when making purchase decisions. As a result, it becomes
17 possible to yield higher savings by optimizing relevant cost elements.” Plaintiffs RJN at Exh. H-
18 3. That document goes on to note that “[a] [total cost of ownership] analysis is especially helpful
19 for more complex purchases.” *Id.*

20 While its policies do not “require a [total cost of ownership] for every purchase,” (*id.*),
21 USPS did not contend that the Next Generation Delivery Vehicle acquisition falls outside of the
22 category of a “complex” decision. In fact, USPS described the complexity of this effort:

23 Electrifying a fleet the size and age of [USPS’s], while maintaining high performance
24 standards and managing a host of **complex**, interconnected changes as we implement key
25 tenets of our Delivering for America plan and modernize our network, will be an
26 unprecedented, monumental effort across hundreds of facilities for multiple years,
particularly given the ongoing universal service mission of [USPS] to continue to deliver
mail and packages to 165 million delivery addresses at least six, and in many instances

27 ¹⁰ The USPS defines “Total Cost of Ownership” as “the total cost incurred over the useful
28 life of an item, encompassing development, purchase, use, maintenance, support, and disposal.”
Plaintiffs RJN at Exh. H-4.

1 seven, days per week.

2 AR 8973 (emphasis added). Given that the *USPS Supplying Principles and Practices* encourages
3 a total cost of ownership analysis for “complex” decisions and the record demonstrates that this is
4 a “complex” decision, USPS could not reasonably rely on that document to justify its use of an
5 upfront cost approach. The agency thus failed “to ‘articulate a rational connection between the
6 facts found and the conclusions made.’” *Akiak*, 213 F.3d at 1146 (citation omitted).

7 **B. The SEIS Underestimates Emissions**

8 USPS underestimated emissions from two categories of internal combustion vehicles by
9 labeling them “light commercial trucks” rather than giving them the more accurate “light-heavy
10 duty” vehicle classification, as defined by EPA, when conducting its analysis. Plaintiffs and EPA
11 had alerted USPS of these flaws in its analysis through their comments on the EIS and SEIS. AR
12 321, 9261, 9597, 9646, 9737. This decision to undercount emissions is particularly important for
13 an agency like USPS because “it own[s] 44.2% of all federal light trucks.” AR 7558.

14 USPS classifies gas-powered Next Generation Delivery Vehicles and commercial off-the-
15 shelf vehicles as the Motor Vehicle Emissions Simulator (MOVES)¹¹ source type, “light
16 commercial truck.” AR 9646. This source type includes trucks weighing less than 10,000 lbs. *Id.*
17 However, source types can be further divided between regulatory classes based on gross vehicle
18 weight rating. *Id.* Light commercial trucks less than 8,500 lbs. gross vehicle weight rating are
19 considered light-duty in regulatory class 30, while those of 8,500-10,000 lbs. are considered light
20 heavy-duty vehicles in regulatory class 41. Two categories of vehicles exceeded the 8,500 gross
21 vehicle weight rating, the Next Generation Delivery Vehicles and left-hand-drive commercial off-
22 the-shelf vehicles. Here, for these two categories of trucks, EPA used the class 30 classification,
23 which understated impacts from the vehicles. By not designating a regulatory class, this SEIS
24 analysis includes lower weight vehicles in the emissions modeling of gas-powered vehicles.
25 Lighter vehicles have lower emission factors.

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27
28 ¹¹ MOVES is EPA’s recommended “emission modeling system that estimates mobile
source emissions for criteria pollutants and GHGs.” AR 9020.

1 Because USPS should have classified these trucks as “light-heavy duty” which would
2 have more appropriately estimated emissions, the EIS is arbitrary and capricious.

3 **C. The SEIS Contains an Inadequate Environmental Justice Analysis**

4 USPS’s cursory analysis of the environmental justice impacts of the Program violates
5 NEPA. Multiple courts have held that an agency’s discretionary environmental justice analysis in
6 an EIS is subject to arbitrary and capricious review. *See* Exec. Order No. 12898: *Federal Actions*
7 *to Address Environmental Justice in Minority Populations and Low-Income Populations*, 59 Fed.
8 Reg. 7629 (Feb. 11, 1994); *Communities Against Runway Expansion, Inc. v. FAA*, 355 F.3d 678,
9 680 (D.C. Cir. 2004) (reviewing environmental justice analysis under arbitrary and capricious
10 standard); *Sierra Club v. FERC*, 867 F.3d 1357 (D.C. Cir. 2017); *Latin Americans for Soc. &*
11 *Econ. Dev. v. Adm’r of Fed. Highway Admin.*, 756 F.3d 447, 465 (6th Cir. 2014); *Coliseum*
12 *Square Ass’n, Inc. v. Jackson*, 465 F.3d 215, 232 (5th Cir. 2006); *Mid States Coal. for Progress v.*
13 *Surface Transp. Bd.*, 345 F.3d 520 (8th Cir. 2003). To determine whether an EIS’s environmental
14 justice analysis is arbitrary and capricious, courts consider whether the analysis is “reasonable
15 and adequately explained,” and whether the agency took a sufficiently “hard look” at those
16 impacts. *See Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321, 1330
17 (D.C. Cir. 2021). Relevant to that inquiry is whether the agency has articulated a reasonable
18 methodology for reaching its environmental justice conclusions. *See Communities Against*
19 *Runway Expansion*, 355 F.3d at 689 (finding the FAA’s methodology reasonable and adequately
20 explained); *Latin Americans for Soc. & Econ. Dev.*, 756 F.3d at 476-77 (record shows that the
21 Federal Highway Administration scored alternatives on their community impact, and conducted a
22 study and community inventory report to understand and minimize impacts in a specific
23 community).

24 USPS’s conclusion that the environmental justice impacts are negligible is based on a
25 cursory analysis that fails to satisfy the “hard look” standard. Plaintiffs and federal expert
26 agencies, including EPA, commented that the EIS oversimplifies its conclusion that nationwide
27 delivery would result in an equal impact on communities regardless of income and geography.
28 AR 9228, 9234-35, 9312-14. USPS did not address these comments and instead responded that

1 deployment of the new, cleaner vehicles will “benefit any locality” over the existing fleet. AR
2 288; *see also* AR 8970 (Preferred Alternative would “have a beneficial effect on the air quality of
3 the 84% of communities around likely major deployment sites that have Environmental Justice
4 concerns.”). But an EIS must contain more than a bare-bones analysis of a project’s nationwide
5 impacts. *California v. Bernhardt*, 472 F. Supp. 3d 573, 619-21 (N.D. Cal. 2020) (while NEPA
6 does not require agencies to include analyses “‘for every particular area affected by the proposed
7 action,’ especially for broad nationwide rules;” this does not enable agencies to “abdicat[e]” their
8 duty to analyze the heightened risks in certain communities, especially when “the potential for
9 alternative approaches exist.”); *see also Hausrath v. U.S. Dep’t of the Air Force*, 491 F. Supp. 3d
10 770, 795 (D. Idaho 2020) (Air Force’s “reason[ing] that, since no one will be affected by noise
11 impacts, disadvantaged populations will not be affected” lacked support in the record).

12 USPS also failed to acknowledge any of the negative emissions impacts that the gas-
13 powered vehicle purchases will have on environmental justice communities. Instead, the SEIS
14 focuses solely on the beneficial effects of the Program. AR 8980, 9042-43, 9709-30. The SEIS
15 was required to include a rigorous analysis of the air quality impacts and health risks that
16 environmental justice communities will face, given that USPS’s preferred alternative includes a
17 significant component of gas-powered vehicles that will likely operate in these communities for
18 decades to come. Moreover, the analysis fails to examine impacts from the continued operation of
19 vehicles that will not be replaced due to the narrowed number of vehicles covered under the
20 revised Program. The record shows that the EIS fails to “‘articulate a rational connection between
21 the facts found and the conclusions made’” about negligible environmental justice impacts. *Akiak*,
22 213 F.3d at 1146 (citation omitted), and thus it is arbitrary and capricious.

23 **V. USPS Failed to Consider the Inconsistencies of Its Preferred Alternative with** 24 **State and Local Laws and Plans**

25 Under NEPA, federal agencies are required to “discuss any inconsistency of a proposed
26 action with any approved State, Tribal, or local plan or law (whether or not federally sanctioned).
27 Where an inconsistency exists, the statement should describe the extent to which the agency
28 would reconcile its proposed action with the plan or law.” 40 C.F.R. § 1506.2(d). Moreover,

1 under USPS’s own regulations, an “environmental impact statement must contain a discussion of
2 any inconsistency between the proposed action and any State or local law, ordinance, or approved
3 plan; and must contain a description of the manner and extent to which the proposed action will
4 be reconciled with the law, ordinance, or approved plan.” 39 C.F.R. § 775.11(b)(10). Failure to
5 comply with these regulations is arbitrary, capricious, and not in accordance with the law. *See*
6 *Sierra Club v. U.S. Forest Serv.*, 843 F.2d 1190, 1195 (9th Cir. 1988) (agency failed to consider
7 impact of logging on California’s water quality standards); *Conservation Cong. v. U.S. Forest*
8 *Serv.*, No. CIV. S-13-0832 LKK/DAD, 2013 WL 4829320, at *16 (E.D. Cal. Sept. 6, 2013) (EIS
9 required because Forest Service did not consider impacts of the project on federal law).

10 USPS entirely failed to meet this mandate. It did not address the Program’s impacts on the
11 numerous Plaintiff state and local agency laws and policies to reduce GHG emissions, even
12 though Government Plaintiffs raised the need to consider these plans and policies in timely
13 comments on the Draft SEIS. AR 9903-05; *see also* AR 11607 (EPA advising USPS to “consider
14 the federal and state regulatory environment that its new vehicles will face”); AR 11613 (EPA
15 advising USPS to consider impacts of Program on state and local climate goals). For example,
16 recognizing the “serious threat” posed by GHG to “the economic well-being, public health,
17 natural resources, and the environment of California,” California enacted various laws setting
18 mandatory GHG standards. *See* Cal. Health & Safety Code § 38501. These standards require the
19 California Air Resources Board to “ensure that statewide greenhouse gas emissions are reduced to
20 at least 40% below the statewide greenhouse gas emissions limit” by the end of 2030, among
21 other things. The States of Colorado, Connecticut, Delaware, Maryland, New Jersey, New York,
22 Pennsylvania, Rhode Island, Vermont, Washington, and the City of New York, have set similar
23 policies and plans, requiring double-digit decreases in GHG emissions at certain benchmarks
24 between the present and 2050. *See supra* at pp. 6-7. However, nowhere in the EIS or SEIS does
25 USPS consider its Program’s impacts on the attainment of these state and local GHG targets. And
26 in fact, [REDACTED]

27 [REDACTED]
28 USPS also failed to consider how its vehicle acquisition policies would conflict with state

1 and local policies and plans to promote the development of zero-emission vehicles. *See supra* at
 2 pp. 6-7. USPS has not provided any explanation why it failed to address these plans, and did not
 3 respond to Government Plaintiffs' comments urging USPS to consider conflicts with these plans
 4 as required under NEPA. AR 11626-28.

5 USPS's failure to evaluate the Program's conformity with state and local GHG and zero-
 6 emission vehicle standards violates its obligation under NEPA to describe inconsistencies of its
 7 project with state and local plans or laws. 40 C.F.R. § 1506.2(d). Omitting such an evaluation
 8 renders the revised ROD arbitrary and capricious, because USPS has "entirely failed to consider
 9 an important aspect of the problem." *Motor Vehicle Mfr. Ass'n*, 463 U.S. at 42.

10 **VI. This Court Should Vacate USPS's Decision and Grant Injunctive Relief**

11 In addition to granting declaratory relief, this Court should vacate the ROD and revised
 12 ROD¹² and enjoin USPS's unlawful acquisition of gas-powered vehicles until USPS completes a
 13 valid NEPA review. Indeed, the default remedy for an unlawful agency action under both NEPA
 14 and the APA is to set aside, or vacate, the agency action. *Se. Alaska Conserv. Council v. U.S.*
 15 *Army Corps. of Eng'rs*, 486 F.3d 638, 654 (9th Cir. 2007), *rev'd on other grounds*, *Coeur Alaska,*
 16 *Inc. v. Se. Alaska Conserv. Council*, 557 U.S. 261 (2009); *California ex rel. Lockyer v. U.S. Dep't*
 17 *of Agric.*, 575 F.3d 999, 1020 (9th Cir. 2009) (upholding vacatur on the basis of NEPA violation).

18 Likewise, the Court's authority to enforce NEPA extends to actions carried out on the
 19 basis of an unlawful NEPA review, like USPS's Program. To obtain permanent injunctive relief,
 20 a plaintiff must show that: (1) it has suffered an irreparable injury; (2) that remedies available at
 21 law, such as monetary damages, are inadequate; (3) a remedy in equity is warranted considering
 22 the balance of hardships between the plaintiff and defendant; and (4) the public interest would not
 23 be disserved by a permanent injunction. *California ex rel. Lockyer*, 575 F.3d at 1019 (citation
 24 omitted). The injury imposed by USPS's unlawful acquisition of gas-powered vehicles, which
 25 would result in excess GHG emissions and reduced air quality compared to zero-emission

26 _____
 27 ¹² Although the revised ROD, and not the original ROD, represents USPS's final decision
 28 on the Program, the original ROD relies on the invalid EIS. Therefore, USPS also should be
 prohibited from proceeding with the project using the original ROD, which selected a 90% gas-
 powered and 10% electric vehicle alternative based on the invalid EIS.

1 alternatives, is irreparable and cannot be remedied by monetary damages. *See id.* (“Environmental
2 injury, by its nature, can seldom be adequately remedied by money damages and is
3 often . . . irreparable”) (citing *Amoco Prod. Co. v. Vill. of Gambell*, 480 U.S. 531, 545 (1987));
4 *Klamath Siskiyou Wildlands Ctr. v. Boody*, 468 F.3d 549, 562 (9th Cir. 2006) (enjoining a
5 completed and in-progress timber sale after concluding the sale did not satisfy NEPA); *N. Alaska*
6 *Env’t Ctr. v. Hodel*, 803 F.2d 466, 471 (9th Cir. 1986) (affirming decision to void mining
7 approvals and ordering shutdown of existing mining operations where National Park Service
8 failed to comply with NEPA).

9 The balance of hardships and public interest also favor an injunction. Plaintiffs are not
10 seeking the removal of vehicles that have already been delivered and/or deployed under the
11 Program.¹³ Moreover, “the public interest favors applying federal law correctly.” *Small v. Avanti*
12 *Health Sys., LLC*, 661 F.3d 1180, 1197 (9th Cir. 2011). USPS’s significant violations of NEPA—
13 by committing millions of dollars to contracts for gas-powered vehicles before completing NEPA
14 review, refusing to consider reasonable alternatives, failing to adequately consider environmental
15 impacts, and failing entirely to consider inconsistencies with state and local plans and policies—
16 warrant an injunction.

17 CONCLUSION

18 For the foregoing reasons, the Court should declare the Next Generation Delivery Vehicle
19 Acquisition Program, ROD, Revised ROD, EIS, and SEIS unlawful, arbitrary, capricious, an
20 abuse of discretion, and otherwise contrary to NEPA. The Court should vacate the ROD and
21 revised ROD, and enjoin the Program until USPS prepares a new and legally compliant EIS.

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27 ¹³ Because of the lack of information regarding USPS’s current vehicle replacement and
28 deployment schedule, Plaintiffs request further briefing, supported by evidence from the parties,
regarding the appropriate remedy should the Court find Defendants did not comply with NEPA.

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ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1

I hereby certify that the above counsel in Case Nos. 3:22-cv-02583 and 3:22-cv-02576 have concurred in the filing of this document.

/s/ Stacy J. Lau
Stacy J. Lau

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CERTIFICATE OF SERVICE

I hereby certify that, on May 24, 2024, I electronically filed the foregoing document with the Clerk of the Court using the ECF System, which will send notification of such filing to all counsel of record by operation of the Court’s ECF System.

/s/ Stacy J. Lau
Stacy J. Lau

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

**STATE OF CALIFORNIA, STATE OF
NEW YORK, COMMONWEALTH OF
PENNSYLVANIA, STATE OF
COLORADO, STATE OF
CONNECTICUT, STATE OF
DELAWARE, STATE OF ILLINOIS,
STATE OF MAINE, STATE OF
MARYLAND, PEOPLE OF THE STATE
OF MICHIGAN, STATE OF NEW
JERSEY, STATE OF NEW MEXICO,
STATE OF NORTH CAROLINA, STATE
OF OREGON, STATE OF RHODE
ISLAND, STATE OF VERMONT, STATE
OF WASHINGTON, DISTRICT OF
COLUMBIA, CITY OF NEW YORK, and
the BAY AREA AIR QUALITY
MANAGEMENT DISTRICT,**

Plaintiffs,

v.

**UNITED STATES POSTAL SERVICE,
and LOUIS DEJOY, in his official capacity
as United States Postmaster General,**

Defendants.

Case Nos. 3:22-cv-02583-RFL
3:22-cv-02576-RFL

**STANDING DECLARATIONS IN
SUPPORT OF PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT**

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**CLEANAIRNOW; CENTER FOR
BIOLOGICAL DIVERSITY; and SIERRA
CLUB,**

Plaintiffs,

v.

**LOUIS DEJOY, in his official capacity as
U.S. Postmaster General; and U.S. POSTAL
SERVICE,**

Defendants.

**STANDING DECLARATIONS IN SUPPORT OF
PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT**

Declaration of Rayan Makarem.....Standing-1

Declaration of Jennifer Molidor.....Standing-5

Declaration of Mary Reinhart.....Standing-10

Declaration of Christopher LaLone.....Standing-14

Declaration of Sarah Johnson.....Standing-34

Declaration of Hadrian Dykiel.....Standing-41

Declaration of Huda Fashho.....Standing-44

Declaration of Jay Chamberlin.....Standing-47

Declaration of Jody Isenberg.....Standing-54

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Defendants.

Case Nos. 3:22-cv-02583-RFL
3:22-cv-02576-RFL

**DECLARATION OF RAYAN
MAKAREM IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

1 **CLEANAIRNOW; CENTER FOR**
2 **BIOLOGICAL DIVERSITY; and SIERRA**
3 **CLUB,**

Plaintiffs,

4 v.

5 **LOUIS DEJOY, in his official capacity as**
6 **U.S. Postmaster General; and U.S. POSTAL**
7 **SERVICE,**

8 Defendants.

9
10 **DECLARATION OF RAYAN MAKAREM**

11 I, Rayan Makarem, declare as follows:

12 1. I am the Director of Environmental Justice Policy at CleanAirNow. I have worked
13 at CleanAirNow since 2022.

14 2. I live in Fairway, Kansas, and work at the CleanAirNow office in the Argentine
15 neighborhood.

16 3. CleanAirNow holds regular meetings to strategize how best to address air
17 pollution and environmental injustice in the Kansas City metro area. As a community member, I
18 provide input on these strategies, in addition to gathering input from fellow community members.
19 I am a community member from a community where CleanAirNow works to address pollution
20 and other impacts.

21 4. CleanAirNow’s members are impacted by transportation pollution every day.
22 CleanAirNow’s members have an interest in reducing the air quality and noise pollution in and
23 around their homes, neighborhoods, places of work, schools, and parks. CleanAirNow’s members
24 also have an interest in minimizing and eliminating additional harms to their members’ health
25 from the Postal Service’s decision to procure internal combustion vehicles.
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1 5. CleanAirNow’s communities are particularly concerned about the cumulative
2 impact of transportation pollution like Postal Trucks and their impacts on overburdened
3 communities. CleanAirNow believes we must pursue 100 percent zero-emission fleets to address
4 the environmental injustice in communities.

5 6. I regularly see postal vehicles in my neighborhood. In addition, I live less than a
6 mile from a major depot for the post office where many postal vehicles come into and out of each
7 day.

8 7. I am deeply concerned about the impacts of this pollution on my health. In
9 addition, electric vehicles are quieter, and deployment of these vehicles will help make my
10 neighborhood quieter.

11 8. I also have a two year old daughter. I am very concerned about the impacts of air
12 pollution on her. I fear she will develop asthma or other respiratory problems. I also am
13 concerned about the impacts of air pollution on my spouse. Postal trucks spewing pollution in
14 our neighborhoods poses a threat to my family’s health, and I am deeply concerned about their
15 safety.

16 9. Air pollution impacts me and my family on a daily basis. Air pollution makes it so
17 we have to go elsewhere to recreate outside. I wish pollution were lower in my neighborhood
18 from the myriad of transportation pollution like locomotives, trucks and delivery vehicles like
19 postal trucks. If zero-emissions were implemented, I would save time and transportation costs
20 from having to leave my neighborhood to recreate.

21 10. Specifically, I believe cleaning up postal trucks would make my neighborhood
22 safer from air pollution. Unfortunately, the Postal Service has not committed to pursuing a 100
23 percent or close to 100 percent zero-emission fleet. Instead, it will continue to operate combustion
24 trucks. The Postal Service also plans to procure tens of thousands combustion trucks that could be
25 on our roads for decades.

1 11. The Postal Service provides no commitment to deploy the electric trucks it will
2 buy in neighborhoods like mine. It is important that overburdened communities across the
3 country receive zero-emission postal trucks first. Our communities suffer the consequences of air
4 pollution most, and zero-emission trucks will provide desperately needed relief.

5 12. Had the postal service properly analyzed the environmental justice consequences
6 of its vehicles programs, I believe it would have deployed zero-emission trucks in my
7 neighborhood first.

8 13. As a member of an overburdened community, I support the litigation
9 CleanAirNow, Sierra Club, and the Center for Biological Diversity are pursuing to clean up
10 harmful postal truck pollution.

11 I declare under penalty of perjury that the foregoing is true and correct to the best of my
12 knowledge and belief. Executed on May 18, 2024.

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Rayan Makarem

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Attorneys for Plaintiff State of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

**STATE OF CALIFORNIA, STATE OF
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MARYLAND, PEOPLE OF THE STATE
OF MICHIGAN, STATE OF NEW
JERSEY, STATE OF NEW MEXICO,
STATE OF NORTH CAROLINA, STATE
OF OREGON, STATE OF RHODE
ISLAND, STATE OF VERMONT, STATE
OF WASHINGTON, DISTRICT OF
COLUMBIA, CITY OF NEW YORK,
and the BAY AREA AIR QUALITY
MANAGEMENT DISTRICT,**

Plaintiffs,

v.

**UNITED STATES POSTAL SERVICE,
and LOUIS DEJOY, in his official capacity
as United States Postmaster General,**

Defendants.

Case Nos. 3:22-cv-02583-RFL
3:22-cv-02576-RFL

**DECLARATION OF JENNIFER
MOLIDOR IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

1 **CLEANAIRNOW; CENTER FOR**
2 **BIOLOGICAL DIVERSITY; and SIERRA**
3 **CLUB,**

Plaintiffs,

4 **v.**

5 **LOUIS DEJOY, in his official capacity as**
6 **U.S. Postmaster General; and U.S. POSTAL**
7 **SERVICE,**

8 Defendants.

9
10 **DECLARATION OF JENNIFER MOLIDOR**

11 I, Jennifer Molidor, state and declare as follows:

12 1. I submit this declaration in support of the standing of Center for Biological
13 Diversity to challenge the revised Record of Decision of the U.S. Postal Service (“USPS” or
14 “Postal Service”) for its Next Generation Delivery Vehicle Acquisitions program.

15 2. I am over 18 years of age and competent to give this declaration. I have personal
16 knowledge of the following facts, and if called as a witness could and would testify competently
17 to them. As to those matters which reflect an opinion, they reflect my personal opinion and
18 judgment on the matter.

19 3. I have been a member of the Center for Biological Diversity (the “Center”) since
20 2015, and I rely upon the Center to represent my interests in protecting our air quality and our
21 environment by gathering and disseminating information about air pollution, advocating for the
22 remediation of that pollution, and enforcing our environmental laws in the courts.

23 4. I work as a Senior Food Campaigner for the Center for Biological Diversity, where
24 I help lead the organization’s sustainable food initiatives. I work to limit the harms of animal
25 industrial agriculture, overpopulation, and overconsumption, while aiming to make our food
26 systems more sustainable for wildlife and the planet. I hold a Ph.D. from the University of Notre
27 Dame and have taught for many years as a professor at Kansas State University and San
28 Francisco State University.

1 5. I live in Cloverdale, California, a city of approximately 8,000 people located in
2 Sonoma County. I live in a single-family home on a busy corner near one of the main
3 intersections in the city. That intersection draws a lot of vehicle traffic because it is near schools
4 and a large suburban neighborhood. I can smell the exhaust and hear the noise from these vehicles
5 almost all the time when I am home.

6 6. I receive mail on a daily basis from USPS. My mail carrier delivers the mail to my
7 house in a Grumann Long Life Vehicle, a traditional USPS delivery truck. USPS makes multiple
8 stops in front of my house each day. When I asked my postal carrier about the number of rounds
9 the Postal Service makes, he told me they come twice a day: once to deliver mail and once to
10 deliver packages. I have noted that on many days the truck actually comes to my home to deliver
11 mail three or four times. Other postal vehicles drive past my house many more times per day.

12 7. My house is approximately a five-minute walk to our local post office. The post
13 office houses approximately 6-7 delivery vehicles. I see and hear these vehicles multiple times
14 each day.

15 8. I moved to Cloverdale to escape the city and be closer to nature, and I spend a lot
16 of time outdoors. I spend a part of almost every day in my front yard gardening, along with my
17 three-year-old son and my dog. I also take long walks around town, sometimes up to six miles,
18 especially along the Russian River.

19 9. I am aware that the United States Postal Service recently finalized a plan to
20 purchase Next Generation Delivery Vehicles to replace most of its current fleet of delivery trucks.
21 The Postal Service's original plan called for approximately 90% of the new vehicle fleet to be
22 gas-burning vehicles, while the remaining 10% would be electric vehicles. I understand that the
23 Postal Service has already signed a contract and paid the first installment to a private company to
24 begin producing these vehicles. I understand that USPS has announced an increase in the number
25 of electric vehicles it would purchase since then.

26 10. My health is directly injured by the Postal Service's acquisition plan. I have
27 asthma that is made worse when the air quality is bad. For example, during the past few years
28 when wildfire smoke was severe in my region, I noticed that my asthma was worse. The health of

1 my son and my dog are also harmed, as they spend long periods of time outside with me.
2 Additional vehicle exhaust from the gas-burning Postal Service trucks adds to the airborne
3 pollution in my area. If the Postal Service’s gas-burning vehicles are passing through my
4 neighborhood multiple times per day for the next several decades, it would limit the outdoor
5 leisure and recreation activities I could enjoy, especially gardening and taking long walks. Had
6 the Postal Service instead chosen to procure a higher percentage of electric vehicles, I would not
7 have these concerns to the same degree.

8 11. Furthermore, I know that increased greenhouse gas (“GHG”) emissions worsen
9 climate change, and that the Postal Service’s acquisition plan will increase GHG emissions,
10 relative to a plan with more electric vehicles. Increased GHG emissions will lead to more severe
11 weather events in my area, including more extreme wildfires during the summer. The plan will
12 also deepen our dependence on oil, the underlying root issue that is accelerating climate change.
13 Instead, the Postal Service should have done a more comprehensive environmental review before
14 finalizing a plan that fully considered the effects of its decision on greenhouse gas emissions and
15 other air quality metrics.

16 12. I joined the Center for Biological Diversity to do my part in fighting climate
17 change. I believe the fossil fuel industry is responsible for accelerating the most severe effects of
18 climate change and that electric vehicles are the future. I own a hybrid Toyota Highlander that I
19 bought out of concern for environmental issues, and I would consider buying a fully electric
20 vehicle once the prices come down. I am also interested in purchasing an electric bike. My
21 personal, aesthetic, and recreational interests are harmed by the Postal Service’s decision to
22 purchase fossil-fuel polluting vehicles that would be in use for the next several decades.

23
24 I state under penalty of perjury under the laws of the United States of America that the
25 foregoing is true and correct to the best of my knowledge and belief.

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27 Executed on May 21, 2024 in Cloverdale, CA.
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Jennifer Molidor

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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

17 **STATE OF CALIFORNIA, STATE OF**
18 **NEW YORK, COMMONWEALTH OF**
19 **PENNSYLVANIA, STATE OF**
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21 **CONNECTICUT, STATE OF**
22 **DELAWARE, STATE OF ILLINOIS,**
23 **STATE OF MAINE, STATE OF**
24 **MARYLAND, PEOPLE OF THE STATE**
25 **OF MICHIGAN, STATE OF NEW**
26 **JERSEY, STATE OF NEW MEXICO,**
27 **STATE OF NORTH CAROLINA, STATE**
28 **OF OREGON, STATE OF RHODE**
ISLAND, STATE OF VERMONT, STATE
OF WASHINGTON, DISTRICT OF
COLUMBIA, CITY OF NEW YORK, and
the BAY AREA AIR QUALITY
MANAGEMENT DISTRICT,

Plaintiffs,

v.

UNITED STATES POSTAL SERVICE,
and LOUIS DEJOY, in his official capacity
as United States Postmaster General,

Defendants.

Case Nos. 3:22-cv-02583-RFL
3:22-cv-02576-RFL

DECLARATION OF MARY
REINHART IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

1 **CLEANAIRNOW; CENTER FOR**
2 **BIOLOGICAL DIVERSITY; and SIERRA**
3 **CLUB,**

Plaintiffs,

4 **v.**

5 **LOUIS DEJOY, in his official capacity as**
6 **U.S. Postmaster General; and U.S. POSTAL**
7 **SERVICE,**

8 Defendants.

9
10 **DECLARATION OF MARY REINHART**

11 I, Mary Reinhart, state and declare as follows:

12 1. I submit this declaration in support of the standing of Center for Biological
13 Diversity to challenge the revised Record of Decision of the U.S. Postal Service (“USPS” or
14 “Postal Service”) for its Next Generation Delivery Vehicle Acquisitions program.

15 2. I am over 18 years of age and competent to give this declaration. I have personal
16 knowledge of the following facts, and if called as a witness could and would testify competently
17 to them. As to those matters which reflect an opinion, they reflect my personal opinion and
18 judgment on the matter.

19 3. I have been a member of the Center for Biological Diversity (the “Center”) since
20 2017, and I rely upon the Center to represent my interests in protecting our air quality and our
21 environment by gathering and disseminating information about air pollution, advocating for the
22 remediation of that pollution, and enforcing our environmental laws in the courts.

23 4. I work as a Senior Media Specialist with the Center. In that role I help produce and
24 coordinate the Center's media and communications work on public lands, including the
25 borderlands, and energy justice.

26 5. I live in a single-family home in Scottsdale, Arizona. There is a very busy six-lane
27 road that is only six houses down from my house. The marked speed limit is 45 miles per hour,
28 but cars and trucks routinely travel over 60 miles per hour. There is constant noise and vehicle

1 exhaust fumes in my community from this road. Additionally, my house is approximately 3.9
2 miles from a large USPS depot which hosts many postal trucks.

3 6. I receive mail on a daily basis from the Postal Service. My mail carrier delivers the
4 mail to my house in a Grumann Long Life Vehicle, a traditional USPS delivery truck. The USPS
5 vehicle can idle on the street for long periods of time as the carrier delivers mail to different
6 houses.

7 7. I run in my neighborhood for several miles about six days per week. Sometimes I
8 will get stuck running behind a gas-powered postal truck as it drives down my neighborhood
9 streets. It bothers me to breathe the exhaust from the USPS truck when I am running, and I
10 quickly try to escape it. But the unpleasant odors disrupt my run and damage my health.

11 8. I also like to hike in my local area and my husband or I walk my dog in the local
12 parks multiple times per day. My ability to enjoy these activities depends on having clean air to
13 breathe. I am much less likely to do these activities when air pollution is already bad, or made
14 worse by vehicle pollution or other sources.

15 9. I am aware that the United States Postal Service finalized a plan to purchase Next
16 Generation Delivery Vehicles to replace most of its current fleet of delivery trucks. The Postal
17 Service's original plan called for approximately 90% of the new vehicle fleet to be gas-burning
18 vehicles, while the remaining 10% would be electric vehicles. I understand that the Postal Service
19 has already signed a contract and paid the first installment to a private company to begin
20 producing these vehicles. I understand that since then, the Postal Service has increased the
21 number of electric vehicles it said it would purchase.

22 10. Scottsdale has a "winter inversion" each year that makes air quality worse in the
23 winter months. During this period, there are "no burn" days. Additional vehicle exhaust from gas-
24 burning Postal Service trucks adds to the airborne pollution in my area. If the Postal Service's
25 gas-burning vehicles pass through my neighborhood multiple times per day for the next several
26 decades, it would limit the outdoor leisure and recreation activities I could enjoy, including my
27 runs and hikes. Had the Postal Service instead chosen to procure a higher percentage of electric
28 vehicles, I would not have these concerns to the same degree.

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13 *Attorneys for Plaintiff State of California*

14 UNITED STATES DISTRICT COURT
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 16 SAN FRANCISCO DIVISION

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 23 **STATE OF MAINE, STATE OF**
 24 **MARYLAND, PEOPLE OF THE STATE**
 25 **OF MICHIGAN, STATE OF NEW**
 26 **JERSEY, STATE OF NEW MEXICO,**
 27 **STATE OF NORTH CAROLINA, STATE**
 28 **OF OREGON, STATE OF RHODE**
ISLAND, STATE OF VERMONT, STATE
OF WASHINGTON, DISTRICT OF
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the BAY AREA AIR QUALITY
MANAGEMENT DISTRICT,

Plaintiffs,

v.

UNITED STATES POSTAL SERVICE,
and LOUIS DEJOY, in his official capacity
as United States Postmaster General,

Defendants.

Case Nos. 3:22-cv-02583-RFL
 3:22-cv-02576-RFL

DECLARATION OF CHRISTOPHER
M. LALONE IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

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<p>CLEANAIRNOW; CENTER FOR BIOLOGICAL DIVERSITY; and SIERRA CLUB,</p> <p style="text-align: right;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>LOUIS DEJOY, in his official capacity as U.S. Postmaster General; and U.S. POSTAL SERVICE,</p> <p style="text-align: right;">Defendants.</p>

DECLARATION OF CHRISTOPHER M. LALONE

Pursuant to 28 U.S.C § 1746, I, Christopher M. LaLone, P.E., declare as follows:

1. I am the Director of the Division of Air Resources at the New York State Department of Environmental Conservation (NYSDEC), where I have worked since 1993. I provide this declaration in support of the Plaintiffs’ motion for summary judgment in this lawsuit challenging the U.S. Postal Service’s (USPS) failure to comply with the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.* (NEPA) in connection with USPS’s purchase of delivery vehicles under its Next-Generation Delivery Vehicles Acquisition program (NGDV Acquisition).

2. The State of New York brought this action on behalf of the state and its citizens and residents to protect their interests, and in furtherance of the state’s sovereign and proprietary interests in the conservation and protection of the state’s natural resources and the environment. These interests include the state’s duties to comply with federal air quality standards and its own climate laws and plans.

3. USPS operates a portion of its fleet of delivery vehicles in New York State along delivery routes and at distribution centers, many of which are located in highly populated areas. For example, USPS operates large distribution centers in and around New York City at 1050 Forbell Street in East New York, Brooklyn; 201 11th Ave. in Manhattan; 14202 20th Ave, in College Point, Queens; and the Mid-Island Processing and Distribution Center at 160 Duryea Rd, Melville, NY; and upstate at locations such as the Rochester Processing and Distribution Center

1 at 1700 Lyell Ave. in Rochester and the Buffalo Processing and Distribution Center at 1200
2 William Street, Unit 3146 in Buffalo. Emissions from USPS delivery vehicles stationed at these
3 centers and at other facilities will have impacts across the State of New York.

4 4. Conversely, reducing emissions from vehicles stationed in New York, such as
5 through electrification, will reduce the impacts of air pollutants. And increasing the percentage of
6 USPS fleet comprised of electric vehicles in other states from which air pollution may be
7 transported to New York State will also reduce the impact of air pollution on New York. Of
8 particular importance to New York are the reductions in emissions from fossil fuel-powered
9 vehicles of “criteria” pollutants such as nitrogen oxides (NOx) (which is a potent precursor to the
10 formation of ground-level ozone pollution) and particulate matter, and other non-criteria
11 pollutants such as greenhouse gases (GHGs).

12 5. To improve air quality and address pollutants such as NOx, ozone and particulate
13 matter, as well as GHG emissions, New York has adopted California’s Advanced Clean Cars II
14 (ACC II) emission standards for light- and medium-duty vehicles beginning with model-year
15 2026 pursuant to Section 177 of the Clean Air Act, thus limiting emissions from in-state mobile
16 sources of pollution. 6 NYCRR Part 218. These standards complement other measures New York
17 State has taken to reduce emissions from stationary sources such as power plants and industrial
18 sources, which the state stringently regulates to comply with the federal Clean Air Act and state
19 laws and regulations. New York State’s adoption of ACC II supports New York Environmental
20 Conservation Law (ECL) §19-0306-b, that establishes the State goal that one hundred percent of
21 new light-duty passenger cars and trucks offered for sale or lease, or sold, or leased, for
22 registration in the state shall be zero-emissions by 2035.

23 6. New York has also adopted strong emissions regulations for medium- and heavy-
24 duty trucks with the Advanced Clean Trucks (ACT) rule, 6 NYCRR Part 218, which requires an
25 increasing percentage of zero-emissions vehicles, such as electric vehicles, beginning with model
26 year 2025 in New York State. The ACT model year zero-emissions vehicle sales requirements
27 progressively increase through model year 2035 and continue beyond model year 2035. ACT
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1 supports ECL §19-0306-b, that establishes the State goal that one hundred percent of medium-
2 duty and heavy-duty vehicles offered for sale or lease, or sold, or leased, for registration in the
3 state be zero-emissions by 2045 for all operations where feasible.

4 7. Under New York’s Climate Leadership and Community Protection Act (Climate
5 Law), New York must reduce economy-wide GHG emissions 85% below 1990 levels by 2050
6 and offset the remaining 15%. ECL § 75-0107. To meet these statutory requirements, New York
7 will require new vehicles of any class sold in the state by 2045 to be zero-emissions. Chapter 423
8 of the New York State Laws of 2021.

9 8. Over these same time periods, New York will also rely on fleet turnover—that is,
10 older private passenger vehicles and public and private vehicle fleets being replaced with newer,
11 lower emitting – including increasingly electric – vehicles resulting in an overall decrease in
12 pollution.

13 9. However, contrary to NEPA, USPS did not assess the consistency of its NGDV
14 Acquisition with New York’s statutory requirements and vehicle electrification regulations. For
15 example, USPS did not quantify the number of electric vehicles it expected to deploy in New
16 York, the times when any such vehicles would be located in New York over the planned six-year
17 acquisition period and beyond, and whether USPS would have sufficient electric vehicles to meet
18 New York’s increasingly stringent requirements while also meeting similar requirements in other
19 states.

20 10. New York’s existing vehicle emission standards apply to manufacturers who sell
21 new vehicles in New York State. Purchasers and operators of fleets such as the Postal Service’s
22 delivery fleet are not yet required to fully electrify their fleets. Yet large fleet purchases of electric
23 vehicles in the next few years can have an important impact on the reduction of criteria, GHG,
24 and mobile air toxics pollutants, while large fleet purchases of gas-powered vehicles, such as the
25 NGDV Acquisition contemplates, will continue to burden New York State with criteria pollutants
26 and weaken its efforts to reduce GHGs emitted within the state.

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1 11. The Postal Service’s fleet is particularly well-suited to electrification, given the
2 predictable, out-and-back nature of delivery routes and a widespread network of Postal Service
3 facilities with dedicated parking where charging infrastructure can be located. The Postal
4 Service’s selection of a 62% electric fleet for the NGDV Acquisition—approximately 66,000
5 electric vehicles nationwide—will reduce overall pollution compared with its current outdated
6 and overwhelmingly gas-powered fleet. However, the Postal Service’s revised record of decision
7 for the NGDV Acquisition still plans for 38% of the fleet to be gas-powered—more than 40,000
8 vehicles—without meaningfully evaluating higher percentages of electrification. The resulting
9 substantial number of gas-powered trucks will emit more criteria and GHG pollution than if
10 USPS had selected an even higher percentage of electric vehicles to be acquired over the same
11 timeframe.

12 12. In addition, if USPS deploys significant numbers of gas-powered delivery vehicles
13 in states upwind of New York State, they will emit criteria pollutants and GHGs, and will
14 contribute to ozone pollution in those upwind states, that will then be transported downwind into
15 New York.

16 13. The Postal Service’s failure to evaluate higher percentages of electric vehicles or
17 to specify where electric vehicles will be deployed will also hamper New York State’s efforts to
18 plan for attainment of the NAAQS for NO_x, ozone and particulate matter and achieve mandatory
19 GHG emission reductions under the state’s Climate Law.

20 14. Acquisition of a significant number of gas-powered Postal Service vehicles in the
21 next few years will be particularly harmful given the Postal Service’s history of operating
22 vehicles long past their useful life.¹ New York relies on fleet turnover to achieve important
23 emissions reductions and milestones over the next few years. But if USPS keeps its new gas-
24 powered vehicles on the road for years or even decades, fleet turnover will be delayed, and the

25 _____
26 ¹ USPS, Final Supplemental Environmental Impact Statement, Next Generation Delivery Vehicle
27 Acquisitions (hereinafter “SEIS”) at 3-1, § 3-2.1. AR 8994 (“the [delivery vehicles] currently in
28 service are on average eight years beyond their 24-year service life.”).

1 persistent presence of these vehicles on New York's roads will conflict with the state's efforts to
2 eliminate such emissions in time to meet the Climate Law's GHG reduction requirements.

3 15. If the Postal Service's NGDV Acquisition fails to achieve higher levels of
4 electrification and continues to ignore New York's air quality and Climate Law requirements (as
5 well as those of other states), and if instead, gas-powered vehicles are deployed to New York
6 State for years or decades into the future, the resulting increase in pollution will harm New York.
7 Specifically, without higher levels of zero-emissions vehicles, such as electric vehicles, New
8 York will suffer the effects of increased emissions of NOx and particulate matter pollution, which
9 will impair New York's efforts to meet federal air pollution standards for ozone and particulate
10 matter. Reduction of emissions of those pollutants is vitally important to protecting the health and
11 safety of New York's residents, including our most vulnerable communities, many of which are
12 situated near roadways and Postal Service distribution centers and have greater exposure to
13 harmful motor vehicle emissions. Failure to reduce GHG emissions both inside and outside New
14 York's borders will worsen the effects of climate change, which, as a result of increased
15 temperatures, will damage New Yorkers' public health, state industries and ecosystems, and the
16 state's public lands, natural resources, and critical infrastructure.

17 **PERSONAL BACKGROUND AND QUALIFICATIONS**

18 16. I have a Bachelor of Science in Chemical Engineering degree from Clarkson
19 University. I am a licensed Professional Engineer in New York.

20 17. I have been the Director of the Division of Air Resources for approximately four
21 years. In addition to my current position, I have held the positions of Assistant Director of Air
22 Resources; Regional Environmental Quality Engineer in the Region 9 Buffalo office; Chief of the
23 Permitting and Compliance Section in the Bureau of Stationary Sources; Chief of the
24 Enforcement Section of the Bureau of Stationary Sources; and other engineering positions within
25 NYSDEC and in the private sector.

26 18. My responsibilities include overseeing the Division of Air Resources' central
27 office in Albany, which carries out the development and implementation of mobile source
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1 regulations and technology development, monitoring and research functions, and stationary
 2 source permitting. In addition, I work with NYSDEC's nine regional offices, which are
 3 responsible for air permitting and enforcement throughout the state.

4 19. Another of my responsibilities is overseeing NYSDEC's air quality planning
 5 efforts. This work includes the development of Clean Air Act-mandated State Implementation
 6 Plans (SIPs). SIPs detail how NYSDEC will assure that, among other things, the air quality in
 7 New York will come into or maintain compliance with the National Ambient Air Quality
 8 Standards (NAAQS) for the "criteria pollutants," including ozone, particulate matter (PM_{2.5}) and
 9 sulfur dioxide (SO₂), set by EPA under Sections 108 and 109 of the Clean Air Act. States are
 10 primarily responsible for ensuring attainment and maintenance of a NAAQS once EPA has
 11 established one.

12 20. I also oversee regulation and mitigation of GHG emissions. Reduction of GHG
 13 emissions from vehicles is an important component of New York State's plan to meet its targets
 14 under the Climate Act. As stated, this law requires New York to reduce economy-wide
 15 greenhouse gas emissions 40 percent by 2030 and no less than 85 percent by 2050 from 1990
 16 levels. Achieving the highest feasible reductions in GHG emissions from large fleets such as the
 17 Postal Service's NGDV Acquisition is vitally important to these planning and reduction efforts.

18 **CRITERIA POLLUTANT EMISSIONS FROM POSTAL SERVICE DELIVERY**
 19 **VEHICLES AND ATTAINMENT OF FEDERAL AIR QUALITY STANDARDS IN NEW**
 20 **YORK**

21 21. The SEIS demonstrates that the electric vehicles USPS plans to acquire have no
 22 direct tailpipe NO_x emissions.² These reductions are crucial for New York State because the on-
 23 road sector accounts for approximately 36% of NO_x emissions in New York State.³

24 22. NO_x is a precursor to ozone and can also lead to the secondary formation of
 25 particulate matter. Exposure to ozone and particulate matter is associated with adverse effects on
 26 human health, including chest pain, coughing, throat irritation, airway inflammation, reduced

27 ² SEIS, at 4-21, tbl. 4-6.1. AR 9024.

28 ³ U.S. EPA, 2017 National Emissions Inventory Data.

1 lung function and damaged lung tissue. Ozone can worsen bronchitis, emphysema and asthma,
2 leading to increased medical costs. Exposure to ozone has also been linked to early deaths. People
3 most at risk from breathing air containing ozone include people with asthma, children, older
4 adults and people who are active outdoors, especially outdoor workers. And people who live,
5 work, or go to school near high-traffic roadways—who tend to be low-income and/or people of
6 color—experience higher rates of these adverse health effects.

7 23. Ground level ozone also damages terrestrial and aquatic ecosystems. Ozone
8 interferes with the ability of plants and forests to produce and store nutrients, which makes them
9 more susceptible to disease, insects, harsh weather and other pollutants. This harms crop
10 production in New York and throughout the United States, resulting in significant losses and
11 injury to native vegetation and ecosystems. Furthermore, ozone damages the leaves of trees and
12 other plants, and can also damage certain man-made materials, such as textile fibers, dyes, rubber
13 products and paints.

14 24. More than 60 percent of New York’s population (over 12 million out of about 20
15 million) live in areas exceeding federal ozone standards. Despite adopting some of the most
16 stringent ozone control programs in the country and including those programs in our ozone SIP,
17 including adoption of California’s vehicle emission standards, the New York-Northern New
18 Jersey-Long Island, NY-NJ-CT Nonattainment Area (New York City Metropolitan Area), which
19 also includes parts of New Jersey and Connecticut, failed to meet the 2008 NAAQS for ozone by
20 the July 2021 deadline. As a result, EPA reclassified the region from “serious” nonattainment to
21 “severe” nonattainment. The New York City Metropolitan Area has also experienced
22 exceedances of the more stringent 2015 NAAQS for ozone and faces an August 2024 deadline to
23 meet the standards or face potential reclassification. Because USPS operates in areas struggling
24 the attain the ozone NAAQS, such as the New York City Metropolitan Area, it is important that
25 USPS adopts a vehicle strategy that supports New York’s ability to meet the ozone NAAQS.

26 25. If New York fails to attain the ozone NAAQS by upcoming statutory deadlines
27 and is reclassified, New York’s public health and economy will bear the burdens. New York’s
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1 residents will face prolonged harms from elevated levels of pollution. And New York State will
2 be required to demonstrate further emissions reductions from its industries, both by regulating
3 already stringently regulated sectors and identifying additional, possibly smaller sources to
4 regulate.

5 26. Furthermore, one component of NO_x emissions in New York that we lack
6 authority to directly regulate is emissions from out-of-state vehicles that may be transported into
7 our states. The reductions that would come from a higher percentage of electric vehicles in other
8 states operated by USPS fleet would also be crucial to our ability to meet the ozone NAAQS;
9 while prolonged operation of substantial numbers of gas-powered vehicles will hinder this
10 attainment.

11 **GHG EMISSION REDUCTIONS, NEW YORK STATE CLIMATE LAW**
12 **REQUIREMENTS, AND CLIMATE CHANGE IMPACTS**

13 27. New York's efforts to reduce GHG emissions have recently been formalized into
14 statutory targets. The Climate Law, which went into effect on January 1, 2020, requires New
15 York to reduce GHG emissions 85% below 1990 levels by 2050 and offset the remaining 15%.
16 ECL § 75-0107.

17 28. The statewide GHG emission reduction requirements established by statute in the
18 Climate Law are applicable to all sources of GHG emissions, including emissions from light-,
19 medium-, and heavy-duty vehicles. ECL § 75-0109. Transportation is the largest sector of GHG
20 emissions in New York, and this sector is growing as a result of increasing vehicle miles
21 travelled. New York cannot mitigate the worst impacts of climate change without significant
22 reductions in GHG emissions from the transportation sector.

23 29. Alongside New York's own actions to reduce transportation sector GHG
24 emissions under the Climate Law, emissions reductions by operators of large public vehicle fleets
25 such as USPS are important to the health and welfare of the state and its ability to meet statutory
26 requirements. The SEIS demonstrates that electric vehicles can significantly reduce the amount of
27 GHG emissions from Postal Service operations.

28

1 30. However, the Postal Service’s failure to even acknowledge New York’s Climate
2 Law requirements severely hampers our ability to assess the consistency of the NGDV
3 Acquisition with the state’s law. The substantial GHG emissions reductions required by the
4 Climate Law are not distant goals, but quickly approaching mandatory targets, and USPS has not
5 provided information necessary to determine whether it has accounted for and has plans to deploy
6 electric vehicles in sufficient numbers to New York.

7 31. Nor did USPS consider the combined requirements of all states that have similar or
8 even more stringent electrification and emissions reduction laws and regulations. Without a clear
9 assessment of whether there are sufficient electric vehicles for deployment to all states and local
10 governments with adopted emissions reductions requirements, New York is harmed by delays in
11 obtaining such information and by uncertainty in making plans to ensure compliance with the
12 Climate Law.

13 32. The Postal Service’s failure to consider higher percentages of electric vehicles also
14 harms New York by allowing higher levels of GHG emissions to persist. While the SEIS
15 considers the speed at which new vehicles can be deployed as a factor in overall emissions
16 reductions (given the urgent need to replace the current, highly polluting fleet), USPS has not
17 sufficiently considered alternatives that would result in a higher percentage of electric vehicles
18 within the same timeframe, or that replace gas-powered vehicles acquired in the near term with
19 electric vehicles in future years to provide further necessary GHG emissions reductions.

20 33. If USPS does not acquire more electric vehicles and instead operates gas-powered
21 trucks far into the future—as has been the case with the current, long-outdated fleet—they will
22 emit higher levels of GHGs for a longer time period. These higher GHG emissions will worsen
23 the public health, environmental and economic harms to New York from climate change set forth
24 below.

25 **A. Climate Change is Already Harming New Yorkers’ Health**

26 34. Demand for health services and the need for public health surveillance and
27 monitoring in New York will increase as the climate continues to change. Heat-related illness and
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1 death are projected to increase. Increased coastal and riverine flooding resulting from intense
2 precipitation increases the risk that such flooding could release contaminants or even toxic
3 substances from wastewater treatment facilities, industrial facilities, and superfund sites with
4 multiple attendant adverse health effects. Such flooding could lead to increased stress and mental
5 health impacts, increased respiratory diseases such as asthma, and increased outbreaks of
6 gastrointestinal diseases—as well impaired ability to deliver public health and medical services.
7 Vector-borne diseases, such as those spread by mosquitoes and ticks (e.g., West Nile virus and
8 Lyme disease), may expand or change their distribution patterns, either of which may adversely
9 affect additional populations. Water- and food-borne diseases are likely to increase without
10 mitigation and adaptation intervention.⁴

11 35. As discussed above, the New York City Metropolitan Area has a significant ozone
12 problem. Climate change is likely to worsen the harms New York is already suffering from
13 ozone. As EPA recognized many years ago when making its 2009 Endangerment Determination
14 regarding greenhouse gas emissions under Section 202(a) of the Clean Air Act, climate change is
15 expected to increase ground level ozone pollution “over broad areas of the country especially on
16 the highest ozone days and in the largest metropolitan areas with the worst ozone problems,” and
17 thereby increase the risk of adverse effects on public health.⁵

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22 ⁴ N.Y. State Energy Research and Dev. Auth., Responding to Climate Change in New York State:
23 The ClimAID Integrated Assessment for Effective Climate Change Adaptation (2011) (Cynthia
24 Rosenzweig, et al., eds.) at 403-04, 421-22 (hereinafter the “ClimAID Report”),
25 [https://www.nyserda.ny.gov/-](https://www.nyserda.ny.gov/-/media/Project/Nyserda/Files/Publications/Research/Environmental/EMEP/climaid/ClimAID-Report.pdf)
26 [/media/Project/Nyserda/Files/Publications/Research/Environmental/EMEP/climaid/ClimAID-](https://www.nyserda.ny.gov/-/media/Project/Nyserda/Files/Publications/Research/Environmental/EMEP/climaid/ClimAID-Report.pdf)
27 [Report.pdf](https://www.nyserda.ny.gov/-/media/Project/Nyserda/Files/Publications/Research/Environmental/EMEP/climaid/ClimAID-Report.pdf)

28 ⁵ 74 Fed. Reg. 66,496, 66,525 (Dec. 15, 2009).

1 **B. Climate Change is Already Harming New York’s Environment**

2 36. Anthropogenic emissions of the predominant GHG, CO₂, are contributing to the
3 observed warming of the planet.⁶ The Earth’s lower atmosphere, oceans, and land surfaces are
4 warming; sea level is rising; and snow cover, mountain glaciers, and Greenland and Antarctic ice
5 sheets are shrinking. Extreme heat events are increasing, and intense storms are occurring with
6 greater frequency. These changes are harming, and will continue to harm, New York State’s
7 environment, including shorelines, drinking water sources, agriculture, forests, and wildlife
8 diversity.

9 **1. Climate Change Has Changed and Continues to Change New York’s Weather**

10 37. Temperatures in New York State have risen on average 0.25°F per decade over the
11 past century, with the greatest warming coming in the most recent decades. This warming
12 includes an increase in the number of extreme hot days (days at or above 90°F) and a decrease in
13 the number of cold days (days at or below 32°F).⁷ The 2011 New York State ClimAID
14 assessment⁸ and the 2014 update to ClimAID⁹ present the numerous direct impacts that have
15 already been observed in New York State. These impacts are described in more detail below.

16 38. New York State is likely to see widespread shifts in species composition in the
17 State's forests and other natural landscapes within the next several decades due to climate change.
18 Losses of spruce-fir forests, alpine tundra and boreal plant communities are expected. Climate
19 change favors the expansion of some invasive species into New York, such as the aggressive
20

21 ⁶ Intergovernmental Panel on Climate Change Working Group I Fifth Assessment Report,
22 Climate Change 2013: The Physical Science Basis, 2013, *available at*
23 <https://www.ipcc.ch/report/ar5/wg1/>

24 ⁷ ClimAID Report at 367, II-10.

25 ⁸ ClimAID Report.

26 ⁹ N.Y. State Energy Research and Dev. Auth., *Climate Change in New York State: Updating the*
27 *2011 ClimAID Climate Risk Information* (2014) (Cynthia Rosenzweig, et al., eds.) (hereinafter
28 the “ClimAID Update”), <https://www.nyserda.ny.gov/climaid>

1 weed, kudzu, and the insect pest, hemlock woolly adelgid. Increased CO₂ in the atmosphere due
 2 to climate change is likely to preferentially increase the growth rate of fast-growing species,
 3 which are often weeds and other invasive species. Lakes, streams, inland wetlands and associated
 4 aquatic species will be highly vulnerable to changes in the timing, supply, and intensity of rainfall
 5 and snowmelt, groundwater recharge and duration of ice cover. Increasing water temperatures
 6 will negatively affect brook trout and other native cold-water fish.¹⁰

7 39. New York State's forests and the economy that depends on them will be hurt by
 8 climate change. Climate change will affect the forest mix in New York, which could change from
 9 the current mixed forest to a temperate deciduous forest. The habitat for existing tree species will
 10 decrease as suitable climate conditions shift northward.¹¹ As forest species change, the resulting
 11 decrease in the vibrant display of New York State fall foliage could have a negative impact on
 12 regional tourism. New York State's Adirondack Park is the largest forested area east of the
 13 Mississippi and consists of six million acres, including 2.6 million acres of state-owned forest
 14 preserve.¹² The Adirondack Park, one the most significant hardwood ecosystems in the world, is
 15 likely to be threatened by these changes.¹³ These changes will also further impact plant and
 16 wildlife species in the Adirondack Park and throughout the state, as the forest composition
 17 changes.

18 **2. Sea-Level Rise and Increased Flooding Are Already Harming New York State**

19 40. Warming ocean waters contribute to sea level rise, with adverse impacts for New
 20 York State. Warmer ocean water, which results in thermal expansion of ocean waters, melting of
 21 land ice, and local changes in the height of land relative to the height of the continental land mass,
 22 are the major contributors of sea level rise. Warming ocean water has the potential to strengthen

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 24 ¹⁰ ClimAID Report 172, 183-84, 196, 203-08.

25 ¹¹ ClimAID Report 177.

26 ¹² N.Y. State Adirondack Park Agency, "About the Adirondack Park,"

27 https://apa.ny.gov/about_park/index.html

28 ¹³ ClimAID Report 178-79, III-47.

1 the most powerful storms, and combined with sea level rise, will lead to more frequent and
2 extensive coastal flooding. Sea level in the coastal waters of New York State and up the Hudson
3 River has been steadily rising over the 20th century. Tide-gauge observations in New York
4 indicate that rates of relative sea level rise were significantly greater than the global mean,
5 ranging from 0.9 to 1.5 inches per decade.¹⁴

6 41. Sea-level rise increases the extent and magnitude of coastal flooding. For
7 example, the twelve inches of sea level rise the New York City area has experienced in the past
8 century exacerbated the flooding caused by Hurricane Sandy by about twenty-five square miles,
9 damaging the homes of an additional 80,000 people in the New York City area alone.¹⁵ That
10 flooding devastated several areas of New York City, including the Brooklyn-Queens Waterfront,
11 the East and South Shores of Staten Island, Southern Queens, Southern Manhattan, and Southern
12 Brooklyn. Some areas lost power and other critical services for extended periods. Overall,
13 Hurricane Sandy caused 53 deaths and the estimated costs of response and recovery in New York
14 State exceeded \$30 billion.¹⁶

15 42. New York State's tidal shoreline, including barrier islands, coastal wetlands, and
16 bays, is expected to be particularly adversely affected by increased sea levels. New York State
17 has 1,850 miles of tidal coastline,¹⁷ and the State owns dozens of state parks within New York
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19 _____
20 ¹⁴ ClimAID Report at 19, 127, 135.

21 ¹⁵ New York City Panel on Climate Change 2015 Report, Chapter 2: Sea Level Rise and Coastal
22 Storms. Ann. N.Y. Acad. Sci. ISSN 0077-8923, available at
23 <http://onlinelibrary.wiley.com/doi/10.1111/nyas.12593/full>

24 ¹⁶ N.Y. Senate Bipartisan Task Force on Sandy Recovery, *Preliminary Response & Recovery*
25 *Report* at 1, 26 (Feb. 2013),
26 [https://www.nysenate.gov/sites/default/files/articles/attachments/Senate%20Bipartisan%20Task%](https://www.nysenate.gov/sites/default/files/articles/attachments/Senate%20Bipartisan%20Task%20Force%20on%20Hurricane%20Sandy%20Report%20FINAL%202-5.pdf)
27 [20Force%20on%20Hurricane%20Sandy%20Report%20FINAL%202-5.pdf](https://www.nysenate.gov/sites/default/files/articles/attachments/Senate%20Bipartisan%20Task%20Force%20on%20Hurricane%20Sandy%20Report%20FINAL%202-5.pdf)

28 ¹⁷ U.S. Bureau of the Census, *Statistical Abstract of the United States 1987* at 187 (107th Ed.).

1 State's coastal boundary. Tidal shoreline property in the State held by private landowners is
2 similarly at risk.

3 43. Climate change will also increase the frequency and magnitude of flood damage
4 and storms. Rising air temperatures associated with climate change intensify the water cycle by
5 driving increased evaporation and precipitation. The resulting altered patterns of precipitation
6 include more rain falling in heavy events, often with longer dry periods in between. Heavy
7 downpours have increased in New York State over the past 50 years. By the end of the 21st
8 century, coastal flood levels currently associated with a 100-year flood could occur approximately
9 four times as often under even conservative sea level rise scenarios. This trend will increase
10 localized flash flooding in urban areas and hilly regions.¹⁸

11 44. New York State incurs significant costs from damage from flooding. Grants to the
12 State from the Federal Emergency Management Agency (FEMA) Public Assistance Program
13 made in the aftermath of flood disasters almost always require the State to fund a portion of the
14 project. For example, in the aftermath of Hurricane Sandy, FEMA obligated over \$14 billion to
15 New York State and local governments.¹⁹ Even in the case of Hurricane Sandy, which was
16 deemed damaging enough that New York State and local governments had to pay only 10% of
17 eligible costs for most projects,²⁰ these grants entailed significant expenditures.

18 45. Flooding due to climate change exacerbates harm to public health and the
19 environment in New York State. Flooding increases water pollution by carrying runoff from land
20 areas containing road oils, salts, farm and lawn chemicals, pesticides, metals, and other pollutants
21 into New York's water bodies. Flooding has also inundated and/or overloaded New York
22 wastewater treatment plants, causing raw sewage to enter waterways. Polluted floodwaters can
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24 ¹⁸ ClimAID Report at 35, 103.

25 ¹⁹ Fed. Emergency. Mgmt. Agency, *New York Hurricane Sandy (DR-4085-NY)* (last updated Dec.
26 20, 2022), <https://www.fema.gov/ar/disaster/4085>

27 ²⁰ Fed. Emergency. Mgmt. Agency, *New York; Amendment No. 9 to Notice of a Major Disaster*,
28 78 Fed. Reg. 32,413 (May 30, 2013).

1 inundate communities and other vulnerable development within floodplains, impairing potable
 2 public and private water supplies, and rendering cleanup more hazardous. Contaminated
 3 floodwaters can also impede other water uses including swimming, beach-going, and fishing.²¹
 4 The U.S. Secretary of Health and Human Services issued Public Health Emergency Declarations
 5 in New York²² following Hurricane Sandy and Tropical Storm Lee, in large part because of post-
 6 flood conditions.

7 46. Climate change requires an increased commitment of State emergency response
 8 resources to protect lives and property in flood prone areas. For example, swift-water or air-
 9 rescue teams rescued over one thousand state residents during the flooding caused by Hurricane
 10 Irene and Tropical Storm Lee. New York State committed extensive emergency resources in
 11 response to the storms, including: deploying 1,700 State Police and 3,200 National Guard
 12 members, opening 200 shelters to house 18,000 citizens, and staffing 74 Disaster Recovery
 13 Centers to assist citizens during the recovery period.²³ The storms closed 400 road segments and
 14 bridges and required repairs at 945 locations on the State highway system.

15 47. As EPA has previously recognized, climate change is also expected to cause more
 16 intense hurricanes and more frequent and intense storms of other types, and heavy precipitation.²⁴
 17 Over 15.5 million people live within coastal counties in New York, the second highest population
 18 within the United States (only California has a larger coastal population).²⁵ According to

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 20 ²¹ ClimAID Report at 422, 444-53.

21 ²² U.S. Dep't of Health & Human Serv., "Public Health Emergency Declarations,"
 22 <https://aspr.hhs.gov/legal/PHE/Pages/default.aspx>

23 ²³ N.Y. State Office of the Governor, *New York State Responds – Hurricane Irene and Tropical*
 24 *Storm Lee: One Year Later*. August 2012. Available at:

25 https://cdn.esd.ny.gov/DisasterRecovery/08232012_LeelIreneOneYear.pdf

26 ²⁴ 74 Fed. Reg. at 66,497-98, 66,525-26.

27 ²⁵ Nat'l Oceanic and Atmospheric Admin., *National Coastal Population Report: Population*
 28 *Trends from 1970 to 2010* (Mar. 2013), available at:

1 NOAA's Office for Coastal Management, New York has experienced 26 billion-dollar disasters
 2 since 2018.²⁶ In July 2023, New York was impacted by severe storms that caused billions of
 3 dollars in damage across the Northeast, including more than \$100 million of flood damage in
 4 West Point, New York.²⁷

5 48. New York State and entities it funds maintain or own critical transportation
 6 infrastructure in lower Manhattan, including the Hugh L. Carey Tunnel (formerly the Brooklyn-
 7 Battery Tunnel),²⁸ the South Ferry Terminal,²⁹ and the West Side Highway, all of which are
 8 threatened by sea level rise and extreme weather events.³⁰

9 49. New York's Metropolitan Transit Authority (the MTA) has, especially in the wake
 10 of Hurricane Sandy, taken extensive measures to prepare its infrastructure for climate change
 11 impacts such as increases in sea-level rise, coastal storm surges, extreme winds, average air
 12 temperature and heat waves, and heavy precipitation.³¹ In 2016, the MTA identified 46 resiliency

13 _____
 14 [https://aambpublicoceanservice.blob.core.windows.net/oceanserviceprod/facts/coastal-](https://aambpublicoceanservice.blob.core.windows.net/oceanserviceprod/facts/coastal-population-report.pdf)
 15 [population-report.pdf](https://aambpublicoceanservice.blob.core.windows.net/oceanserviceprod/facts/coastal-population-report.pdf)

16 ²⁶ Nat'l Oceanic and Atmospheric Admin, Office for Coastal Mgmt., "Coastal Management: Fast
 17 Facts," <https://coast.noaa.gov/states/new-york.html>

18 ²⁷ Nat'l Oceanic and Atmospheric Admin, Office for Coastal Mgmt., "Fast Facts: Hurricane
 19 Costs," <https://coast.noaa.gov/states/fast-facts/hurricane-costs.html>

20 ²⁸ See MTA, *2017 Adopted Budget: February Financial Plan, 2017-2020*, available at
 21 [http://web.mta.info/mta/budget/pdf/MTA%202017%20Adopted%20Budget%20February%20Fin-](http://web.mta.info/mta/budget/pdf/MTA%202017%20Adopted%20Budget%20February%20Financial%20Plan%202017-2020.pdf)
 22 [ancial%20Plan%202017-2020.pdf](http://web.mta.info/mta/budget/pdf/MTA%202017%20Adopted%20Budget%20February%20Financial%20Plan%202017-2020.pdf)

23 ²⁹ *Id.* at 106.

24 ³⁰ N.Y. State Dep't of Transport., Real Estate Division, Notice of Appropriation, "Route 9A
 25 Reconstruction Project," available at <http://a836->

26 [acris.nyc.gov/DS/DocumentSearch/DocumentImageView?doc_id=FT_1840006500484](http://a836-acris.nyc.gov/DS/DocumentSearch/DocumentImageView?doc_id=FT_1840006500484)

27 ³¹ MTA, *MTA Climate Adaptation Task Force Resiliency Report* at 8, available at
 28 <https://new.mta.info/document/10456>

1 projects across its transit system, requiring a total expenditure of just over \$750 million, which
 2 included both state and federal funding.³² These projects included:

- 3 a. Resiliency measures (e.g., hardening of pump systems, watertight doors, and
 4 portal-sealing) designed to improve underground and underwater subway
 5 tunnels from flooding from future Category 2 storms, with an additional three-
 6 foot safety factor;
- 7 b. Redesign of bus depots with interior and exterior flood protections;
- 8 c. Elevation of electric substations on the MTA Metro-North Railroad's Hudson
 9 Line four feet above projected flood levels; and
- 10 d. The installation of flood barriers on each side of the Hugh L. Carey Tunnel.³³

11 50. As of 2019, the MTA reported progress or completion of many of these climate
 12 resiliency projects, including elevation and replacement of substations across the system,
 13 installation of flood and debris protection walls, replacement of critical power and signaling
 14 components, flood gates at the Hugh L. Carey Tunnel, and seawall and shoreline repair at the
 15 Rockaway bridges.³⁴

16 51. As climate change continues to worsen, it is expected that the State will be
 17 required to develop and pay for additional resiliency projects, as well as bearing the costs of
 18 damage from extreme weather incidents associated with climate change. For example, in
 19 September 2021, Hurricane Ida caused over one hundred million dollars of damage to New York
 20 City alone, including damage to transportation infrastructure.³⁵ For this reason, reduced GHG

21 _____
 22 ³² *Id.* at 12.

23 ³³ *Id.* at 16-27.

24 ³⁴ MTA, *MTA Climate Adaptation Task Force 2019 Resiliency Report: Update on agency-wide*
 25 *climate resiliency projects*, available at <https://new.mta.info/document/10461>

26 ³⁵ See Fed. Emergency. Mgmt. Agency, Press Release, "\$279 Million in Federal Funding Fuels
 27 New York Two Months After Hurricane Ida" (Nov. 8, 2021), [https://www.fema.gov/press-](https://www.fema.gov/press-release/20211110/279-million-federal-funding-fuels-new-york-two-months-after-hurricane-ida)
 28 [release/20211110/279-million-federal-funding-fuels-new-york-two-months-after-hurricane-ida](https://www.fema.gov/press-release/20211110/279-million-federal-funding-fuels-new-york-two-months-after-hurricane-ida)

1 emissions, including from USPS's delivery vehicles, are crucial to reducing the severity of
2 climate change impacts for New York.

3 **C. Climate Change is Harming New York's Economy**

4 52. Climate change is also expected to result in less frequent summer rainfall,
5 increased evaporation, and additional, and possibly longer, summer dry periods, potentially
6 impacting the ability of water supply systems to meet demands. Reduced summer flows on large
7 rivers and lowered groundwater tables could lead to conflicts among competing water users.³⁶

8 53. Climate change is expected to hurt agriculture in New York State. Increased
9 summer heat stress will negatively affect cool-season crops, requiring farmers to take adaptive
10 measures such as shifting to more heat-tolerant crop varieties and eventually resulting in a
11 different crop mix for New York's farmers. The loss of long cold winters could limit the
12 productivity of apples and potatoes, as these crops require longer cold dormant periods. New
13 York's maple syrup industry also requires specific temperature conditions for the sugar maples to
14 produce sap. It is projected that sugar maple trees will be displaced to the north as the climate
15 changes and temperatures increase. Increased weed and pest pressure associated with longer
16 growing seasons and warmer winters will be an increasingly important challenge. Water
17 management will be a more serious challenge for New York farmers in the future due to
18 increased frequency of heavy rainfall events, and more frequent and intense summer water
19 deficits by mid-to late-century.³⁷

20 54. Dairy farmers will also be impacted by warmer air temperatures associated with
21 climate change. Milk production is maximized under cool conditions ranging from 41°F to
22 68°F.³⁸ New York is the third largest producer of milk in the United States, behind California

23 _____
24 ³⁶ ClimAID Report at 103.

25 ³⁷ ClimAID Report at 236; III-69; 187-88; III-58; 222-23; 241-243.

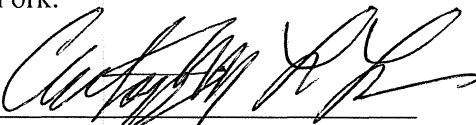
26 ³⁸ Alvaro Garcia, *Dealing with Heat Stress in Dairy Cows* (South Dakota Cooperative Extension
27 Service, Sep. 2002, updated June 16, 2020) at 1, available at [https://extension.sdstate.edu/dealing-
28 heat-stress-dairy-cows](https://extension.sdstate.edu/dealing-heat-stress-dairy-cows)

1 and Wisconsin, with 14.8 billion pounds of milk produced in 2016.³⁹ During the unusually hot
2 summer in 2005, declines in milk production of five to 15 pounds of milk per cow per day (an
3 eight to 20 percent decrease) in many New York dairy herds were reported.⁴⁰ In 2019, New York
4 reported approximately \$2.5 billion dollars of cash receipts from its dairy industry.⁴¹ A loss of
5 milk production efficiency from heat effects could result in the loss of hundreds of millions of
6 dollars annually for New York's dairy industry, and a consequential negative impact to the State's
7 tax revenues.

8 55. In sum, the effects of climate change on New York will be deadly, widespread,
9 and extremely expensive.

10 I declare under penalty of perjury that I believe the foregoing to be true and correct.

11 Executed on May 23, 2024 in Albany, New York.

12 
13 _____
14 Christopher M. LaLone, P.E.

15
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19 _____
20 ³⁹ U.S. Dep't of Agric., *Milk Production, Disposition and Income: 2016 Summary* at 10, available
21 at https://www.nass.usda.gov/Publications/Todays_Reports/reports/mlkpd17.pdf

22 ⁴⁰ Peter Frumhoff, *Confronting Climate Change in the U.S. Northeast: Science, Impacts, and*
23 *Solutions*, Northeast Climate Impacts Assessment, July 2007 at 69, available at
24 [https://www.ucsusa.org/sites/default/files/2019-09/confronting-climate-change-in-the-u-s-](https://www.ucsusa.org/sites/default/files/2019-09/confronting-climate-change-in-the-u-s-northeast.pdf)
25 [northeast.pdf](https://www.ucsusa.org/sites/default/files/2019-09/confronting-climate-change-in-the-u-s-northeast.pdf)

26 ⁴¹ U.S. Dep't of Agric., *Milk Production, Disposition and Income: 2019 Summary* at 9,
27 [https://downloads.usda.library.cornell.edu/usda-](https://downloads.usda.library.cornell.edu/usda-esmis/files/4b29b5974/5h73qf66r/hd76sk303/mlkpd20.pdf)
28 [esmis/files/4b29b5974/5h73qf66r/hd76sk303/mlkpd20.pdf](https://downloads.usda.library.cornell.edu/usda-esmis/files/4b29b5974/5h73qf66r/hd76sk303/mlkpd20.pdf)

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15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

17 **STATE OF CALIFORNIA, STATE OF**
18 **NEW YORK, COMMONWEALTH OF**
19 **PENNSYLVANIA, STATE OF**
20 **COLORADO, STATE OF**
21 **CONNECTICUT, STATE OF**
22 **DELAWARE, STATE OF ILLINOIS,**
23 **STATE OF MAINE, STATE OF**
24 **MARYLAND, PEOPLE OF THE STATE**
25 **OF MICHIGAN, STATE OF NEW**
26 **JERSEY, STATE OF NEW MEXICO,**
27 **STATE OF NORTH CAROLINA, STATE**
28 **OF OREGON, STATE OF RHODE**
ISLAND, STATE OF VERMONT, STATE
OF WASHINGTON, DISTRICT OF
COLUMBIA, CITY OF NEW YORK, and
the BAY AREA AIR QUALITY
MANAGEMENT DISTRICT,

Plaintiffs,

v.

UNITED STATES POSTAL SERVICE,
and LOUIS DEJOY, in his official capacity
as United States Postmaster General,

Defendants.

Case Nos. 3:22-cv-02583-RFL
3:22-cv-02576-RFL

DECLARATION OF SARAH
JOHNSON IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

1 **CLEANAIRNOW; CENTER FOR**
2 **BIOLOGICAL DIVERSITY; and SIERRA**
3 **CLUB,**

Plaintiffs,

4 v.

5 **LOUIS DEJOY, in his official capacity as**
6 **U.S. Postmaster General; and U.S. POSTAL**
7 **SERVICE,**

8 Defendants.

9
10 **DECLARATION OF SARAH JOHNSON**

11 I, Sarah Johnson, state and declare as follows:

12 1. I am the Executive Director of the Air Quality Program at the New York City
13 Department of Health and Mental Hygiene (“DOHMH”). I submit this declaration in support of
14 the standing of the City of New York to challenge the revised Record of Decision of the U.S.
15 Postal Service (“USPS”) for its Next Generation Delivery Vehicle Acquisitions program. I make
16 this declaration of my own personal knowledge, unless otherwise indicated.

17 2. I earned a bachelor’s degree in Biology from University of North Carolina, Chapel
18 Hill, a Master’s of Science in Ecology from University of California, Davis and a Master’s of
19 Public Health from University of California, Berkeley.

20 3. I have been the Executive Director of the Air Quality Program at DOHMH since
21 2018. Prior to my current role, I served as a Senior Spatial Analyst with the Air Quality Program.
22 In that role, I executed spatial and statistical analyses to predict air pollution distribution, health
23 effects, and inform program planning and evaluation.

24 4. DOHMH, New York City’s public health agency, performs a wide-ranging
25 portfolio of services for the City and its residents. Among these services is the Bureau of
26 Environmental Science and Policy in the Division of Environmental Health, which collects and
27 analyzes crucial environmental and health data, including factors related to air quality, climate
28 change, transportation, and health outcomes, among others.

Standing-35

1 5. In my current capacity, I oversee DOHMH’s research related to air quality and its
 2 relation to health outcomes such as premature deaths and hospital visits. A major component of
 3 the air quality program is the New York City Community Air Survey (“Survey”), which measures
 4 black carbon, nitrous oxides, ozone, sulfur dioxide, and fine particulate matter (“PM2.5”) across
 5 78 sites citywide. These sites, which measure pollution at the street level, where people spend
 6 most of their time, provide detailed information that supplements information gathered from
 7 federally required building-mounted monitors throughout the City.

8 6. Internal combustion vehicles, such as those contemplated to be purchased by the
 9 United States Postal Service to replace its existing fleet, are major sources of pollutants,
 10 especially PM2.5, nitrous oxides, and carbon monoxide.¹

11
 12 **AIR POLLUTION IN NEW YORK CITY IMPACTS NEW YORKERS’ HEALTH AND**
 13 **WELLBEING**

14 7. Since 2009, the first year of data collection, concentrations of black carbon, nitrous
 15 oxides, sulfur dioxide, and PM2.5 have substantially decreased.

16 8. Despite this substantial progress, New Yorkers are still exposed to air pollution. In
 17 2022, the citywide average PM2.5 concentration was 5.8 mcg/m³, the average nitric oxide
 18 concentration was 10.3 ppb, and the average nitrogen dioxide concentration was 14.7 ppb.²

19 9. This pollution poses significant risks to New Yorkers’ health. PM2.5 can cause or
 20 exacerbate asthma, cancer, strokes, lung disease, and cardiovascular disease.³ PM2.5 pollution
 21
 22
 23

24 ¹ NYC Environmental & Health Data Portal, *Your Neighborhood’s Air Quality*, [https://a816-](https://a816-dohbsp.nyc.gov/IndicatorPublic/data-features/neighborhood-air-quality/)
 25 [dohbsp.nyc.gov/IndicatorPublic/data-features/neighborhood-air-quality/](https://a816-dohbsp.nyc.gov/IndicatorPublic/data-features/neighborhood-air-quality/) (last visited May 15,
 26 2024).

26 ² NYC Environmental & Health Data Portal, *Air Quality*, [https://a816-](https://a816-dohbsp.nyc.gov/IndicatorPublic/data-explorer/air-quality/?id=2023#display=summary)
 27 [dohbsp.nyc.gov/IndicatorPublic/data-explorer/air-quality/?id=2023#display=summary](https://a816-dohbsp.nyc.gov/IndicatorPublic/data-explorer/air-quality/?id=2023#display=summary) (last
 28 visited May 15, 2024).

28 ³ NYC Environmental & Health Data Portal, *The Public Health Impacts of PM2.5 from Traffic*
Air Pollution, [https://a816-](https://a816-dohbsp.nyc.gov/IndicatorPublic/data-stories/traffic-and-air-pollution/)
[dohbsp.nyc.gov/IndicatorPublic/data-stories/traffic-and-air-pollution/](https://a816-dohbsp.nyc.gov/IndicatorPublic/data-stories/traffic-and-air-pollution/)
 (last visited May 15, 2024).

1 contributes to approximately 2,000 deaths and 5,150 hospital visits annually in New York City.⁴
 2 Nitrogen oxides (encompassing both nitric oxide and nitrogen dioxide) similarly can exacerbate
 3 breathing issues like asthma and cause lung tissue damage, which leads to increased hospital
 4 visits.⁵ Recent studies done by DOHMH found that current levels of nitrogen dioxide contribute
 5 to over 600 deaths annually in New York City.⁶

6
 7 **VEHICLE EMISSIONS ARE A SIGNIFICANT CONTRIBUTOR TO AIR POLLUTION**
 8 **IMPACTING HEALTH**

9 10. Internal combustion vehicles contribute significantly to PM2.5, nitrogen oxide,
 10 and carbon monoxide pollution in New York City. Traffic accounts for 14% of PM2.5 emissions
 11 and 22% of nitrogen dioxide emissions citywide.⁷ Given the significant health impacts from
 12 PM2.5, PM2.5 from traffic alone contributes to an estimated 320 premature deaths, 550
 13 emergency room visits, and 160 hospitalizations annually in New York City.⁸

14 11. In addition to the human suffering caused by increased PM2.5 and nitrogen oxide
 15 emissions, these health impacts lead to increased costs for the City and its residents. The City's
 16 public hospital system, NYC Health + Hospitals ("H+H"), handles a high load of cardiovascular
 17 and respiratory hospitalizations and emergency room visits. In 2022, H+H treated New Yorkers
 18 for asthma at approximately 78,000 emergency department visits and through over 14,000

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 22 ⁴ NYC Environmental & Health Data Portal, *Health Impacts of Air Pollution*, [https://a816-](https://a816-dohbsp.nyc.gov/IndicatorPublic/data-explorer/health-impacts-of-air-pollution/?id=2124#display=summary)
 23 [dohbsp.nyc.gov/IndicatorPublic/data-explorer/health-impacts-of-air-](https://a816-dohbsp.nyc.gov/IndicatorPublic/data-explorer/health-impacts-of-air-pollution/?id=2124#display=summary)
 24 [pollution/?id=2124#display=summary](https://a816-dohbsp.nyc.gov/IndicatorPublic/data-explorer/health-impacts-of-air-pollution/?id=2124#display=summary) (last visited May 15, 2024).

25 ⁵ NYC Environmental & Health Data Portal, *Air Quality*, *supra* note 3.

26 ⁶ Ariel Spira-Cohen et al., *Estimating attributable deaths from short-term pollution effects: Differential air pollution impact on cause-specific mortality*, 2022 Environmental Health Perspectives 1 (2022).

27 ⁷ NYC DOHMH, *The Public Health Impacts of PM2.5 From Traffic Air Pollution* (2021), available
 28 at <https://a816-dohbsp.nyc.gov/IndicatorPublic/data-stories/traffic-and-air-pollution/>; EPA, 2020
 National Emissions Inventory Data, available at [https://www.epa.gov/air-emissions-](https://www.epa.gov/air-emissions-inventories/2020-national-emissions-inventory-nei-data)
 inventories/2020-national-emissions-inventory-nei-data (last visited May 17, 2024).

⁸ NYC DOHMH, *The Public Health Impacts of PM2.5 From Traffic Air Pollution*, *supra* note 7.
Standing-37

1 hospitalizations.⁹ Twenty five percent of the asthma patients at H+H hospitals are children.¹⁰
 2 The average cost of an asthma-related emergency department visit is \$2,700 for a child and
 3 \$3,500 for an adult.¹¹

4 12. Of the PM2.5 and nitrogen dioxide caused by vehicle emissions, the majority is
 5 produced by trucks and buses, including medium- and light-duty trucks like those used by USPS
 6 – despite the fact that cars account for approximately 94% of vehicle miles traveled in the City –
 7 highlighting the extent of truck and bus pollution.¹² Similarly, the majority of premature deaths
 8 and hospital visits attributable to PM2.5 traffic pollution are caused by truck and bus traffic.¹³

9
 10 **VEHICLE EMISSIONS AND HEALTH IMPACTS ARE NOT EXPERIENCED EQUALLY**
 11 **CITYWIDE**

12 13. Certain neighborhoods in New York City shoulder a disproportionate burden of
 13 vehicle-related PM2.5 emissions. Neighborhoods in New York City with high poverty rates have
 14 about 50% higher PM2.5 pollution from vehicle emissions than neighborhoods with low poverty
 15 rates.¹⁴ The relationship is even stronger when considering only bus and truck attributable
 16 PM2.5.¹⁵

17 14. This relationship is consistent with the higher concentration of distribution
 18 facilities, which draw increased truck traffic, in higher poverty neighborhoods and environmental
 19
 20

21 _____
 22 ⁹ NYC Health + Hospitals, Community Needs Assessment, 22 (2022),
 23 <https://hhinternet.blob.core.windows.net/uploads/2022/07/community-health-needs-assessment-2022.pdf>

24 ¹⁰ *Id.*

25 ¹¹ New York Statewide Planning and Research Cooperative System, Hospitalization and
 26 Emergency Department charge per visit, 2012-2014.

27 ¹² See Iyad Kheirbek, et al., *The contribution of motor vehicle emissions to ambient fine particulate matter public health impacts in New York City: a health burden assessment*, Environmental Health Vol. 15, Article 89 (2016), <https://doi.org/10.1186/s12940-016-0172-6>; EPA, 2020 National Emissions Inventory Data, *supra* note 7.

28 ¹³ Kheirbek, et al., *supra* note 12.

¹⁴ NYC DOHMH, *The Public Health Impacts of PM2.5 From Traffic Air Pollution*, *supra* note 7.

¹⁵ *Id.*

1 justice areas.¹⁶ A 2024 review of existing and planned distribution facilities in New York City
 2 found that 68% of the facilities were located within environmental justice areas.¹⁷

3 15. Beyond the higher PM2.5 vehicle emissions, neighborhoods with higher rates of
 4 poverty also have disproportionately higher rates of PM2.5-attributable morbidity and mortality.¹⁸
 5 For example, the PM2.5-related emergency department visit rate in East Harlem, a neighborhood
 6 with a higher rates of poverty, is over 2.5 times the rate city-wide, even though the East Harlem
 7 PM2.5 concentration is similar to the citywide concentration.¹⁹ Overall, the PM2.5-attributable
 8 emergency department visits related to asthma are over eight times as high in very high poverty
 9 neighborhoods than they are in low-poverty neighborhoods.²⁰ The New York City neighborhoods
 10 with the highest rates of pollution-related hospital visits are all environmental justice areas.²¹

12 **IMPACT OF USPS PURCHASE OF COMBUSTION ENGINES ON NEW YORK CITY**

13 16. The cursory, post-hoc environmental review and USPS's decision to purchase up
 14 to 38% new internal combustion vehicles will prolong New Yorkers' exposure to PM2.5, nitrogen
 15 oxides, and carbon monoxide, and will hamper New York City's significant progress in reducing
 16 air pollution. Health impacts, including increased hospitalization and premature mortality, will
 17 continue.

18 17. USPS's decision disproportionately affects environmental justice communities;
 19 many USPS distribution centers are located within environmental justice communities, which
 20 suffer disproportionate exposure to vehicle-related PM2.5. For example, the USPS distribution
 21 facilities located at 1050 Forbell Street in East New York, Brooklyn; 201 11th Ave. in Manhattan;

24 ¹⁶ NYC Mayor's Office of Climate and Environmental Justice, EJNYC 87 (2024), available at
 25 [https://climate.cityofnewyork.us/wp-](https://climate.cityofnewyork.us/wp-content/uploads/2024/04/EJNYC_Report_FIN_20240424.pdf)
 26 [content/uploads/2024/04/EJNYC_Report_FIN_20240424.pdf](https://climate.cityofnewyork.us/wp-content/uploads/2024/04/EJNYC_Report_FIN_20240424.pdf).

27 ¹⁷ *Id.*

28 ¹⁸ Kheirbek, et al., *supra* note 12.

¹⁹ NYC Environmental & Health Data Portal, *Air Quality*, *supra* note 3; NYC DOHMH, *The Public Health Impacts of PM2.5 From Traffic Air Pollution*, *supra* note 7.

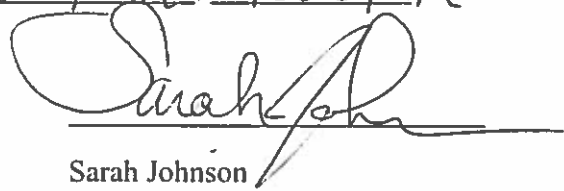
²⁰ Kheirbek, et al., *supra* note 12.

²¹ NYC DOHMH, *The Public Health Impacts of PM2.5 From Traffic Air Pollution*, *supra* note 7.

1 and 14202 20th Ave, in College Point, Queens are all in environmental justice communities.²²
2 Continued emissions from USPS internal combustion engine vehicles at these sites will prolong
3 nearby residents' disproportionate exposure to vehicle-related emissions.
4
5

6 I state under penalty of perjury under the laws of the United States of America that the
7 foregoing is true and correct to the best of my knowledge and belief.

8 Executed on May 24, 2024 in New York, New York

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10 
11 Sarah Johnson

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27 ²² NYC Mayor's Office of Climate and Environmental Justice, *EJNYC Full Data Mapper* (2024),
28 [https://experience.arcgis.com/experience/
6a3da7b920f248af961554bdf01d668b/page/Data-Explorer/](https://experience.arcgis.com/experience/6a3da7b920f248af961554bdf01d668b/page/Data-Explorer/).

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DECLARATION OF HADRIEN
DYKIEL IN SUPPORT OF
PLAINTIFFS' MOTION FOR
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2 **BIOLOGICAL DIVERSITY; and SIERRA**
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Plaintiffs,

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5 **LOUIS DEJOY, in his official capacity as**
6 **U.S. Postmaster General; and U.S. POSTAL**
7 **SERVICE,**

8 Defendants.

9
10 **DECLARATION OF HADRIEN DYKIEL**

11 I, Hadrien Dykiel declare as follows:

12 1. I make this Declaration of my own personal knowledge. If called to testify as a
13 witness, I could and would testify competently to the contents hereof.

14 2. I am a member of the Sierra Club in good standing.

15 3. I currently live in Evergreen, Colorado, which is located in an area that is in
16 nonattainment of the Clean Air Act's National Ambient Air Quality Standards for ozone.

17 4. I have a young son who is particularly susceptible to the impacts of air pollution.
18 Pollution from transportation sources makes me really concerned for his health.

19 5. My family enjoys outdoor activities, including walking and running, but we alter
20 their activities based on air pollution levels. On high pollution days, we refrain from engaging in
21 these outdoor activities that we love.

22 6. I routinely see several postal vehicles travel in my neighborhood daily. These
23 vehicles contribute to poor air quality on high pollution days. Since these vehicles travel in my
24 neighborhood, the impacts of these vehicles on the health of my family are real.

25 7. I am very concerned that continued reliance on gas postal vehicles will impact air
26 quality in my neighborhood. I am also concerned about the large number of postal vehicles in the
27
28

1 Denver region contributing to poor air quality where I live and work. The Postal Service
2 continued reliance of postal vehicles that runs on gas is particularly concerning because these
3 vehicles can stay on our roads for decades, which could contribute to the unsafe air in my region.

4 8. In addition to air quality, I am deeply concerned about the climate change impacts
5 from this decision. The catastrophic consequences of climate change like wildfires will be felt by
6 me and my family.

7 9. We need to tackle harmful air pollution and climate pollution from transportation.
8 Purchasing tens of thousands of postal vehicles that run on fossil fuels will not achieve these
9 goals.
10

11 10. I support litigation by the Sierra Club challenging the United States Postal
12 Service's compliance with the National Environmental Policy Act.

13 I declare under penalty of perjury that the foregoing is true and correct to the best of my
14 knowledge and belief. Executed on May 23, 2024.
15

16 *Hadrien Dykiel*
17 Hadrien Dykiel
18

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3 ABIGAIL BLODGETT
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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

17 **STATE OF CALIFORNIA, STATE OF**
18 **NEW YORK, COMMONWEALTH OF**
19 **PENNSYLVANIA, STATE OF**
20 **COLORADO, STATE OF**
21 **CONNECTICUT, STATE OF**
22 **DELAWARE, STATE OF ILLINOIS,**
23 **STATE OF MAINE, STATE OF**
24 **MARYLAND, PEOPLE OF THE STATE**
25 **OF MICHIGAN, STATE OF NEW**
26 **JERSEY, STATE OF NEW MEXICO,**
27 **STATE OF NORTH CAROLINA, STATE**
28 **OF OREGON, STATE OF RHODE**
ISLAND, STATE OF VERMONT, STATE
OF WASHINGTON, DISTRICT OF
COLUMBIA, CITY OF NEW YORK, and
the BAY AREA AIR QUALITY
MANAGEMENT DISTRICT,

Plaintiffs,

v.

UNITED STATES POSTAL SERVICE,
and LOUIS DEJOY, in his official capacity
as United States Postmaster General,

Defendants.

Case Nos. 3:22-cv-02583-RFL
3:22-cv-02576-RFL

DECLARATION OF HUDA FASSHO IN
SUPPORT OF PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT

1 **CLEANAIRNOW; CENTER FOR**
2 **BIOLOGICAL DIVERSITY; and SIERRA**
3 **CLUB,**

Plaintiffs,

4 v.

5 **LOUIS DEJOY, in his official capacity as**
6 **U.S. Postmaster General; and U.S. POSTAL**
7 **SERVICE,**

8 Defendants.

9
10 **DECLARATION OF HUDA FASSHO**

11 I, Huda Fassho, declare as follows:

12 1. I am the Senior Managing Director of Member Care at the Sierra Club. I have
13 worked for the Sierra Club since April of 2011 and have been in a supervisory role for 13 years.

14 2. In my role, I manage all aspects of the Sierra Club's customer service functions
15 related to members, including maintaining an accurate list of members and managing the
16 organization's member database.

17 3. The Sierra Club is a membership organization incorporated under the laws of the
18 State of California, with its principal place of business in Oakland, CA. It is recognized as a not-
19 for-profit corporation under Section 501(c)(3) of the United States Internal Revenue Code.

20 4. The Sierra Club's mission includes the protection and restoration of the natural and
21 human environment. Its activities include public education, advocacy, and litigation to enforce
22 environmental laws. It has been at the forefront of protecting our natural resources at the national
23 level since its establishment in 1892. The National Environmental Policy Act (NEPA) is vital to
24 protect our wildlife habitats along with preserving our climate and human health, especially with
25 regards to pollution. The Sierra Club advocates for policies that uphold national safeguards like
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1 NEPA and advocates for cleaning up transportation pollution. The Next Generation Vehicle
2 Delivery project is critical to this advocacy to clean up transportation pollution.

3 5. When an individual becomes a member of the Sierra Club, their current residential
4 address is recorded in the Sierra Club's membership database. This database is regularly updated
5 each business day to add new members, reflect address changes, and change membership status
6 for those who are no longer active members.

7
8 6. The Sierra Club currently has approximately 662,889 members nationwide.

9 I declare under penalty of perjury that the foregoing is true and correct to the best of my
10 knowledge and belief. Executed on May 18, 2024.

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13 
14 Huda Fashho

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Case Nos. 3:22-cv-02583-RFL
 3:22-cv-02576-RFL

DECLARATION OF JAY
CHAMBERLIN IN SUPPORT OF
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

1 **CLEANAIRNOW; CENTER FOR**
2 **BIOLOGICAL DIVERSITY; and SIERRA**
3 **CLUB,**

Plaintiffs,

4 v.

5 **LOUIS DEJOY, in his official capacity as**
6 **U.S. Postmaster General; and U.S. POSTAL**
7 **SERVICE,**

Defendants.

8
9
10 **DECLARATION OF JAY CHAMBERLIN**

11 I, Jay Chamberlin, state and declare as follows:

12 1. I submit this declaration in support of the standing of the State of California in this
13 case. I make this declaration of my own personal knowledge, unless otherwise indicated.

14 2. I am the Chief of the Natural Resources Division of the California Department of
15 Parks and Recreation (“Department”), a position I have held since 2010. I have worked in the
16 conservation field for more than 30 years. I received a Masters of Science in Natural Resources
17 and Environment from the University of Michigan in 1998. Prior to my current position, I served
18 as Environmental Program Manager at the California Department of Water Resources from 2008
19 to 2010, and Deputy Assistant Secretary at the California Natural Resources Agency from 2005 to
20 2008. I have also worked as a consultant to the Ecosystem Restoration Program for the California
21 Bay-Delta Authority, and as Policy Manager for the Pacific Forest Trust, where my work focused
22 on climate projects and policies.

23 3. I regularly give presentations on climate change and its impacts to the California
24 State Park System, and on plans, management practices, and policies for addressing those
25 impacts. I have given such presentations to professionals, students, and other audiences,
26 including, for example, the California State Assembly’s Select Committee on Sea Level Rise and
27 the California Economy. I have also given a series of climate change presentations and updates
28

1 (in January 2018, September 2018, and May 2019) to the California State Parks and Recreation
2 Commission, the body with authority for guiding policy and planning for the State Park System.

3 4. The Department manages the California State Park System, which consists of 280
4 park units and approximately 1.6 million acres of land. Parks are located in every bioregion of
5 California, and the State Park System protects some of the most significant native ecosystems in
6 California, including old growth forests, grasslands, coastal dunes and prairies, oak woodlands,
7 alpine lakes, and roughly one-quarter of the California coastline. Many of California's rare and
8 endangered species have habitat on state park land. The State Park System also protects the
9 largest assemblage of cultural resources in California, including historic adobe buildings,
10 California Missions, and archaeological sites and much more. The State Park System receives in
11 excess of 80,000,000 visitors per year, and it is the primary destination for shoreline recreation in
12 California.

13 5. I am familiar with scientific studies and agency reports that summarize observed
14 and modeled data related to global climate change and with evidence of the influence that climate
15 change is having on resources in the State Park System. My knowledge is based on my ongoing
16 review of the current scientific literature, participation in interagency climate-focused working
17 groups, attendance and participation at professional conferences, trainings, and workshops, and
18 my work for the Department.

19 6. For years, Department staff have been engaged in active management,
20 documentation, and monitoring of resource conditions throughout the State Park System. Many of
21 the specific threats to biological diversity and native species that have emerged in recent years are
22 attributable to, or compounded by, the influence of climate change. Climate-influenced impacts
23 on State Park System resources include accelerated coastal erosion, the spread of pests and
24 pathogens (such as bark beetles), changes in phenology (the timing of seasonal natural
25 phenomena such as blossoms on trees or flowers), changes to wildlife habitat and behavior,
26 increases in the size, frequency and severity of wildfires. Other predicted changes – such as
27 changes to the winter snowpack in the Sierra Nevada range, increased temperatures (including
28 higher low temperatures) – also appear to be happening. These changes in natural systems due to

1 climate change damage the land, native plants, and wildlife that are the primary natural resources
2 of the State Park System. In the course of my work, I have reviewed information and reports by
3 the State of California, Department and other agencies concerning these phenomena, and have
4 been involved in developing plans, programs, and restoration projects that address these impacts.

5 7. Scientific models of global climate change, which link the buildup of greenhouse
6 gases to increased global temperatures, predict that by the year 2100 the average annual
7 maximum daily temperature in California will increase by 5.6 to 8.8 degrees Fahrenheit.
8 Scientific studies and models further predict that by 2100, as a result of increased temperatures
9 caused by greenhouse gas emissions—and consequent thermal expansion and glacial ice melt—
10 mean sea levels along the coast will rise between 1 and 7 feet, greatly increasing wave run up (the
11 upper level reached by a wave on a beach) and storm surges. Due to uncertainty in the models,
12 actual mean sea level rise could well exceed the predicted levels by considerable margins. Also,
13 sea level rise will vary by location, and certain areas could experience sea levels that exceed the
14 predicted mean levels.

15 8. Based upon my professional experience and knowledge of California's State Park
16 System, if the predicted changes in temperature, precipitation, and sea level continue to occur,
17 they would continue to have significant adverse and costly impacts on the State Park System,
18 including but not limited to those I summarize below. Additional emissions of greenhouse gases
19 will continue to drive climate change and worsen these impacts in the future.

20 9. Rising sea levels will drastically reduce the amount of beach available for
21 shorebirds, including threatened and endangered species. In fact, many of California's beaches,
22 including many in the State Park System, such as Crystal Cove in Orange County, are narrow
23 bands of sand backed by steep cliffs. At predicted rates of sea level rise, as many as 67% of
24 Southern California Beaches – including the beaches at dozens of state park units – will be lost by
25 2100. Also, any additional rise in sea level will affect the salinity, temperature, and hydrology in
26 California's many estuaries and lagoons, thereby impacting the aquatic life—including rare,
27 threatened and endangered fish—that rely on estuaries for breeding or rearing. In addition, sea
28 level rise threatens infrastructure in the more than 100 coastal units of the State Park System.

1 Preliminary modeling indicates 5 feet of sea level rise and a 100-year storm would result in the
2 inundation of 593 structures, 150 acres of parking lots, 93 campgrounds and day-use areas, and
3 65 miles of access roads at coastal state park units (and this estimate does not include
4 underground infrastructure, bluff erosion, and archaeological losses). The reduced or destroyed
5 beaches, coastal estuaries, lagoons, and wetlands and the destruction of other fish and wildlife
6 habitats are material impacts to State trust resources. Moreover, damaged infrastructure will also
7 negatively impact the ability of visitors to access the coast, another material impact to the purpose
8 of State Beaches to provide for recreational access to the coast. Finally, sea level rise will
9 negatively impact the balance of payments of the State—as revenues from visitors may decline
10 even as costs to maintain, restore, and protect park resources and facilities increase. These costs
11 are already being incurred as winter storm damage in January 2023 impacted dozens of coastal
12 state park units and inflicted over \$200 million in damages.

13 10. In addition, the California State Park System includes many important cultural
14 resources, including archeological and historic sites, such as Native American sites, 18th century
15 missions, historic lighthouses and piers, and buildings, including historic campgrounds and other
16 sites constructed by the Civilian Conservation Corps. These resources are irreplaceable, and the
17 protection or documentation of cultural resources that would be inundated by sea level rise would
18 be very expensive. For instance, even a small rise in sea level will erode or inundate many of the
19 State Park System’s ancient shell middens. These cultural resources, which contain remnants
20 from California’s earliest human residents, date back thousands of years and would be
21 permanently lost for their descendants and for visitors and researchers as well.

22 11. Global climate change models in combination with other predictive studies also
23 suggest that wildfires will increase in size, frequency and severity, with a 77 percent increase in
24 average area burned by 2100. The State’s recent experiences concerning wildfires are generally
25 consistent with these predictions. In 2021, the highest temperature in recorded human history was
26 recorded in California, at Death Valley National Park, exceeding the previous record set in the
27 same location in 2020. Over the last 40 years, California’s fire season has increased by an
28 estimated 75 days—and in some places in the State the fire season is nearly year-round. Eighteen

1 of the 20 largest wildfires in the State's recorded history have occurred since 2000, with 13 of
2 those occurring since 2010.

3 12. Increases in the frequency and severity of wildfires will have a significant impact
4 on the State Park System. The Department and its allied agencies, including the California
5 Department of Forestry and Fire Protection, currently expend significant resources both to protect
6 park infrastructure and natural and cultural resources from wildfires, and to prevent these fires.
7 Growing wildfire activity also increases the risk that irreplaceable resources will be lost,
8 including historic structures. Over the last 15 years, numerous state parks have been impacted by
9 wildfires, and the increasing frequency of wildfires has become a more important problem for the
10 State Park System. In 2020, the wildfires that collectively burned more acres of California than at
11 any time since fire records have been kept burned more than 115,000 acres of the State Park
12 System across 22 State Park units. In Big Basin Redwoods State Park – California's first state
13 park – the entire park headquarters, including buildings that were designated national historic
14 landmarks, were completely destroyed during the CZU complex fires in August of 2020. The old
15 growth redwood forest is expected to recover but old growth trees and associated wildlife that are
16 by definition irreplaceable resources were also lost. Previously, the October 2017 Wine Country
17 fires in Napa and Sonoma Counties burned through several state parks, including Trione-Annadel
18 State Park, Sugarloaf Ridge State Park, and Robert Louis Stevenson State Historic Park, and
19 threatened Jack London State Historic Park, while the 2018 Woolsey Fire burned through several
20 state parks including Malibu Creek State Park, Leo Carrillo State Park, and parts of Point Mugu
21 State Park.

22 13. Observed changes, along with global climate change models, also suggest that
23 coastal fog declines of about 33% observed in recent decades could accelerate due to greenhouse
24 gas-driven warming and changed ocean circulation. Diminished fog would have a severe and
25 damaging impact on natural forest types that are dependent upon fog, including the endangered
26 Torrey pine, and rare pines such as the native Monterey and Bishop pines, and the Coast
27 redwood. All four of these species are protected in the State Park System. In addition to their
28 ecological importance, these forest types draw many visitors to the State Park System, and a


1 decline in these forests would constitute a critical impact on the natural resources of the State
2 Park System and would result in fewer visitors and a loss of revenue to the Department.

3 14. The Department also manages several parks in winter snow areas, as well as the
4 Sno-Park Program for California, which provides the public roadside access to winter sports
5 recreation. Global climate change studies predict reductions in winter-spring snowpack, which
6 would result in loss of recreational opportunities and increased flooding downstream, along with
7 operational challenges and associated costs at reservoir parks. It may also reduce snow access and
8 revenues associated with the Sno-Park Program.

9 15. While significant and unavoidable impacts from climate change are already
10 impacting the resources of the State Park System as summarized above, the most extreme impacts
11 of climate change on the State Park System likely depend on current and future greenhouse gas
12 emissions and decisions made to avoid those emissions. Significant expansions of fleets of gas-
13 powered, rather than zero-emission, vehicles will impair and delay state-level and national-level
14 efforts to reduce greenhouse gas emissions. Thus, these emissions will likely accumulate in larger
15 quantities in the atmosphere, resulting in increased climate risk and climate change impacts to the
16 State Park System that I have described in this declaration.

17 I state under penalty of perjury under the laws of the United States of America that the
18 foregoing is true and correct to the best of my knowledge and belief.

19 Executed on May 22, 2024 in SACRAMENTO, California.

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22 JAY CHAMBERLIN
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ISLAND, STATE OF VERMONT, STATE
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Case Nos. 3:22-cv-02583-RFL
3:22-cv-02576-RFL

DECLARATION OF JODY ISENBERG
IN SUPPORT OF PLAINTIFFS’
MOTION FOR SUMMARY
JUDGMENT

1 **CLEANAIRNOW; CENTER FOR**
2 **BIOLOGICAL DIVERSITY; and SIERRA**
3 **CLUB,**

Plaintiffs,

4 v.

5 **LOUIS DEJOY, in his official capacity as**
6 **U.S. Postmaster General; and U.S. POSTAL**
7 **SERVICE,**

8 Defendants.

9
10 **DECLARATION OF JODY ISENBERG**

11 I, Jody Isenberg, declare as follows:

12 1. I make this Declaration of my own personal knowledge. If called to testify as a
13 witness, I could and would testify competently to the contents hereof.

14 2. I have lived in San Bernardino since 1976, and at my current address since 1984.

15 3. I am a member of the Sierra Club in good standing. I first became a member in
16 1983, and I have intermittently been a member since then. I most recently reinstated my
17 membership in December 2016.

18 5. I am greatly concerned about the effects of poor air conditions in my neighborhood
19 and in San Bernardino.

20 6. I suffer from sinus congestion, a runny nose, an intermittent cough, stinging eyes,
21 and low energy. I have sought medical attention for my sinuses. I believe my symptoms are
22 exacerbated, if not caused, by poor air quality. I check our air quality every day and notice that
23 my symptoms are worse on days when air pollution is high.

24 7. I enjoy outdoor activities like working in the yard and swimming in our pool. As a
25 result of my symptoms, there are about two days a month when I don't have the energy to go
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1 outside, and instead I just stay in bed and read. I also limit my outdoor activities when the air
2 quality is poor to protect my health.

3 8. Delivery of mail and packages impacts my community greatly. Continued reliance
4 on internal combustion engine (ICE) trucks to deliver mail will continue to contribute to dirty air
5 in San Bernardino, which will make my health issues worse and will further limit my ability to
6 spend time outdoors. I am also concerned about the harm that the increased pollution will cause to
7 the health of my husband and the broader San Bernardino community.

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9 9. My home is on a hill and it has a beautiful view across the valley, which I enjoy
10 greatly. Often, I look out my window and I can't see the valley because of the blanket of
11 pollution. Aesthetically, it's horrible, and seeing the pollution so regularly also makes me worry
12 about the property value of my home and about the well-being of the children growing up in the
13 area. The air pollution and obscured view from my home also affect my mental health. It is very
14 depressing to see the gray/brown layer of pollutants hanging over the valley, turning the
15 otherwise blue sky into an ashen gray blanket. The visible "smog" has not been this bad since the
16 early 1970's.

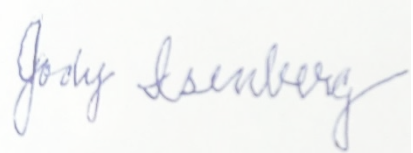
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18 10. I remain deeply concerned about the continued reliance on ICE vehicles to move
19 letters and packages by the United States Postal Service. The most recent Air Quality
20 Management Plan for the South Coast Air Basin indicated we must go to zero-emissions
21 everywhere feasible to meet federal air quality standards. Decisions to purchase tens of thousands
22 of combustion trucks could impede meeting air quality standards. In addition, postal vehicles can
23 remain on our roads for decades. Because Southern California is an area that refines significant
24 fossil fuel volumes, continued reliance on ICE vehicles could continue to contribute to significant
25 refinery pollution that contributes to air pollution region as combustion postal trucks continue to
26 operate in the United States.
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1 11. All these concerns make me very worried for myself, my husband, and the
2 community of San Bernardino. I think about air pollution in my community every day. As a
3 result, I have been active in the Sierra Club’s efforts to clean up transportation pollution.

4 12. I retired a few years ago, and I hoped that when I retired I could pursue hobbies
5 like walking, pottery, and gardening. Continued pollution from sources like delivery trucks will
6 limit my ability to take part in these activities.

7 13. I support litigation by the Sierra Club challenging the United States Postal
8 Service’s compliance with the National Environmental Policy Act.

9 I declare under penalty of perjury that the foregoing is true and correct to the best of my
10 knowledge and belief. Executed on May 24, 2024.

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15 _____
16 Jody Isenberg

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NEW YORK, COMMONWEALTH OF
14 PENNSYLVANIA, STATE OF
COLORADO, STATE OF CONNECTICUT,
15 STATE OF DELAWARE, STATE OF
ILLINOIS, STATE OF MAINE, STATE OF
16 MARYLAND, PEOPLE OF THE STATE OF
MICHIGAN, STATE OF NEW JERSEY,
17 STATE OF NEW MEXICO, STATE OF
18 NORTH CAROLINA, STATE OF
OREGON, STATE OF RHODE ISLAND,
19 STATE OF VERMONT, STATE OF
WASHINGTON, DISTRICT OF
20 COLUMBIA, CITY OF NEW YORK, and
21 the BAY AREA AIR QUALITY
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25 **UNITED STATES POSTAL SERVICE, and
26 LOUIS DEJOY, in his official capacity as
United States Postmaster General,**

27 Defendants.
28

Case Nos. 3:22-cv-02583-RFL
3:22-cv-02576-RFL

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' CONSOLIDATED
MOTION FOR SUMMARY
JUDGMENT**

Date: November 19, 2024
Time: 10:00 a.m.
Location: Courtroom 15, 18th Floor
Judge: The Honorable Rita F. Lin

Actions Filed: April 28, 2022

1 **CLEANAIRNOW; CENTER FOR**
2 **BIOLOGICAL DIVERSITY; and SIERRA**
3 **CLUB,**

4 Plaintiffs,

5 v.

6 **LOUIS DEJOY, in his official capacity as U.S.**
7 **Postmaster General; and U.S. POSTAL**
8 **SERVICE,**

9 Defendants.

10 The Consolidated Motion for Summary Judgment of Plaintiffs California, New York,
11 Pennsylvania, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, People of the State of
12 Michigan, New Jersey, New Mexico, North Carolina, Oregon, Rhode Island, Vermont,
13 Washington, District of Columbia, the City of New York, the Bay Area Air Quality Management
14 District, and CleanAirNow, Center for Biological Diversity, and Sierra Club (“Plaintiffs”), and
15 the Cross-Motions for Summary Judgment of Defendants United States Postal Service and Louis
16 DeJoy, in his official capacity as United States Postmaster General (“Defendants”), and of
17 Oshkosh Defense, LLC (“Defendant-Intervenor”), came on for hearing on November 19, 2024 at
18 10:00 a.m. in Courtroom 15 of this Court.

19 The Court, having reviewed and considered the papers filed in support of and in
20 opposition to the parties’ cross-motions, and having received and considered the arguments of
21 counsel, finds that good cause exists to GRANT Plaintiffs’ Consolidated Motion for Summary
22 Judgment in its entirety, and to DENY Defendants’ and Defendant-Intervenor’s cross-motions for
23 summary judgment.

24 It is hereby ORDERED that:

- 25 1. Plaintiffs’ Consolidated Motion for Summary Judgment is GRANTED;
26 2. Defendants’ Cross-Motion for Summary Judgment is DENIED;
27 3. Defendant-Intervenor’s Cross-Motion for Summary Judgment is DENIED;

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4. The Court finds Defendants’ Final Environmental Impact Statement, Supplemental Environmental Impact Statement, Record of Decision, and revised Record of Decision for the Next Generation Delivery Vehicle Acquisition Program (“Program”) are unlawful, arbitrary, capricious, and an abuse of discretion under the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.* (“NEPA”);
5. Defendants’ Record of Decision, which relies on the Final Environmental Impact Statement, and revised Record of Decision for the Program are vacated;
6. The Final Environmental Impact Statement and Supplemental Environmental Impact Statement for the Program are remanded to Defendants;
7. The Program is enjoined until Defendants fully comply with NEPA by preparing a new and legally compliant Environmental Impact Statement.

Dated: _____

The Honorable Rita F. Lin
United States District Court Judge