

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

THOMAS HOFFMAN, JOSEPH
STRONG, VINCENT SHIBLER,
and DAVID SHIBLER,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
TREASURY; JANET L. YELLEN, in her
Official Capacity as United States Secretary of
Treasury; ADITI HARDIKAR, in her Official
Capacity as Acting Assistant Secretary of the
Treasury for Management; LAUREL
BLATCHFORD, in her Official Capacity as the
Chief Implementation Officer for the Inflation
Reduction Act; AVIVA ARON-DINE, in her
Official Capacity as Assistant Secretary for Tax
Policy at Treasury; DANIEL WERFEL, in his
Official Capacity as Commissioner of the
Internal Revenue Service; COUNCIL ON
ENVIRONMENTAL QUALITY; BRENDA
MALLORY, in her Official Capacity as Chair of
the Council on Environmental Quality; KEITH
KELLY, in his Official Capacity as Chair of the
Jackson County Board of Commissioners;
MARK A. PRUETT, in his Official Capacity as
Member of the Jackson County Board of
Commissioners; LINDA GERHARDT, in her
Official Capacity as Member of the Jackson
County Board of Commissioners,

Defendants.

CIVIL ACTION NO. 5:25-cv-4003

**BRIEF OF AMICUS CURIAE STAND 4 THE LAND KANSAS IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

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CORPORATE DISCLOSURE STATEMENT

Stand 4 the Land Kansas is a grassroots, not-for-profit movement. It has no parent company and no subsidiaries. It does not exist to make money, but to help Kansas families, neighbors, and communities to better understand and protect their property rights.

INTEREST OF *AMICUS CURIAE*¹

Amicus Curiae Stand 4 the Land Kansas is a property rights, landowner, and environmental-rights advocacy organization that exists for the purpose of educating and advocating for Kansans' property rights. It is a not-for-profit and non-partisan movement to help families, neighbors, and communities to better understand: their property rights, overreaching government policies that impact land, and how to engage a community conversation about freedom and how land ownership protects that freedom. In its capacity as an educational and advocacy organization in Kansas, *Amicus* has a unique perspective and insight to add to this Court's decisional process in this case.

Among other things, Stand 4 the Land Kansas has been active in legislative advocacy. For example, in October 2023, the Director of *Amicus* testified before a special Kansas legislative committee urging a change in Kansas law to tip the scale of eminent domain in favor of private landowners and away from solar companies.² *Amicus* also publishes opinion columns in Kansas news outlets to educate the public and to foster political engagement with issues important to its mission involving, among other things, property and land rights, responsible

¹ No party's counsel authored any part of this brief. No one, apart from *Amicus* and their counsel, contributed money intended to fund the brief's preparation or submission.

² See Tim Carpenter, *Kansas organizations lobby to restrain use of eminent domain on solar, wind projects*, Kansas Reflector (Oct. 23, 2023), available at <https://kansasreflector.com/2023/10/23/kansas-organizations-lobby-to-restrain-use-of-eminent-domain-on-solar-wind-projects/>.

energy development and production, and the creation of “data centers” and their implication on privacy and property rights.³

Consistent with its overarching mission, *Amicus* files this amicus brief for two principal reasons. *First*, to express to this Court why the environmental impact study that was not done here is so important and thus why a preliminary injunction is warranted. *Second*, to provide an avenue for those most impacted here—the local farmers, ranchers, businesses, and residents who would be negatively impacted by development of the Jeffrey Solar project—to have their voices be heard.

INTRODUCTION AND SUMMARY OF ARGUMENT

“Freedom and property rights are inseparable, you cannot have one without the other.”⁴ So said George Washington over 225 years ago. And it is just as true today.

But what’s equally true is that property rights in the abstract are of little use, without a strong protection of property and land rights in the particular. Further, that a wealthy corporation’s property rights are of no greater value than a single, poor individual’s rights. Put differently, a man who lives in a cardboard box is entitled to the use and enjoyment of that box, and to the enjoyment of blue, sunny skies, clean air, potable water, and the like, just as much as the man with 10,000 acres, 1,000,000 solar panels, and friends in high places. The man with the money and connections cannot simply trample the man with neither.

But in Jackson County, Kansas, absent this Court’s intervention in granting Plaintiff’s motion for preliminary injunction, the desires of some—for so-called “clean” energy, tax breaks,

³ See, e.g., Virginia Macha, *How much power over Kansas ratepayers does Evergy need?*, Kansas Informer (March 18, 2024), available at <https://kaninfo.com/opinion/how-much-power-over-kansas-ratepayers-does-evergy-need/>.

⁴ Page Carroccia Dringman, *Regulatory Takings: The Search for A Definitive Standard*, 55 Mont. L. Rev. 245, 245 (1994) (quoting Washington).

and large profits—will trample the rights of local farmers, ranchers, businesses, and residents who live alongside the area planned for development.

Stand 4 the Land Kansas is especially interested in this case because of the widespread negative impact the development of the Jeffrey Solar project will have—and already has had—on local businesses and residents. But this case has implications far beyond Jackson County and the area immediately around the planned site of the Jeffrey Solar Project. This is so because the very things that give Kansas its identity (and make it such an attractive place for farmers, ranchers, and folks who desire simple, small town living)—blue skies, plenty of sun, open fields, and a lack of concentrated industrialized cities—is also what make it so attractive to large-scale utility solar production companies.⁵ The voice of NextEra Energy, Inc. (“NextEra”) and its affiliates were, unfortunately, heeded and accepted by local and federal government officials. Perhaps it is not surprising that NextEra’s desires were met with no resistance and no requirement to abide by the National Environmental Policy Act (“NEPA”), given that Next Era is the largest producer of wind and solar energy in the world. But NEPA does not exist for some, but for all. And here, where a major federal government action significantly impairs the human environment in and around the planned Jeffrey Solar project site, a NEPA environmental review was required.

Admittedly, NextEra and its affiliates have rights, including property rights. *Amicus* gladly celebrates those rights, as it does all property and land rights. But those rights cannot be exercised at the expense of other, less wealthy, less influential folks within Kansas who will be negatively impacted by the planned project. *Amicus* wishes it could tell the stories of every

⁵ Celia Hack, *Solar developers are flocking to Kansas. But many communities are skeptical of their proposals* (Nov. 8, 2023) available at <https://www.kcur.org/2023-11-08/communities-skeptical-of-solar-kansas>.

person, business, or nonprofit negatively impacted by the planned Jeffrey Solar project, and other projects like it. But space and time prevent that. Instead, this brief will simply tell six stories of Kansas families and individuals to provide a lens into the impact—never reviewed by an environmental impact study—on the local population.

But before turning to these Kansas-specific stories, first consider the cautionary tale of the California Ivanpah solar power plant. Costing \$2.2 billion to build, spanning 3,500 acres, and promising vast amounts of “clean” energy, the Ivanpah plant will likely be shut down soon just 11 years after its opening in 2014 in the pristine Mojave Desert.⁶ Among other problems, it was too expensive to be economically feasible, was a blight and potential danger to motorists blinded by the panels, killed thousands of tortoises and birds (who were literally burned alive),⁷ and destroyed irreplaceable desert habitat and negatively impacted several plant species.⁸ Lest the Jeffrey Solar project become another Ivanpah, this Court should look long and hard at Plaintiff’s arguments, and ultimately conclude that the government violated the law by failing to comply with NEPA.

⁶ Zachary Faria, *The sun sets on California’s massive solar plant*, Washington Examiner, available at <https://www.msn.com/en-us/weather/topstories/the-sun-sets-on-california-s-massive-solar-plant/ar-AA1GcBTH?ocid=BingNewsSerp>.

⁷ The “hot solar flux” around the plant’s towers reached temperatures up to 1,000 degrees, charring birds “as they pass through beam sunlight.” William Harrison, *Ivanpah’s Twilight Reveals Hard Lessons for California’s Clean Energy Ambitions and Technology Choices*, available at <https://www.msn.com/en-us/weather/topstories/ivanpah-s-twilight-reveals-hard-lessons-for-california-s-clean-energy-ambitions-and-technology-choices/ar-AA1GgqDC?ocid=BingNewsSerp>.

⁸ Michael R. Blood, *11 years after a celebrated opening, massive solar plant faces a bleak future in Mojave Desert*, AP (Jan. 30, 2025), available at <https://apnews.com/article/california-solar-energy-ivanpah-birds-tortoises-mojave-6d91c36a1ff608861d5620e715e1141c>.

ARGUMENT

If completed, the planned Jeffrey Solar Project will significantly affect the quality of the human environment, necessitating a NEPA environmental review.

Amicus agrees with Plaintiffs’ arguments that the planned Jeffrey Solar project constitutes a “major Federal action[] significantly affecting the quality of the human environment,” thereby requiring a NEPA environmental review before the project can proceed. See 42 U.S.C. § 4332(2)(C). The Supreme Court interpreted the phrase “human environment” to mean “physical environment—the world around us, so to speak.” *Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 772 (1983). There can be little doubt that the development of the 5,000-acre industrial Jeffrey Solar project will have a large-scale impact on the “physical environment” (aka, “the world around us”). Importantly, negative health effects, including psychological effects, of major federal actions are relevant under NEPA, so long as the negative effect is “proximately related to a change in the physical environment.” *Id.* at 773–74. As Justice Brennan wrote, “[t]here can be no doubt that psychological injuries are cognizable under NEPA,” so long as the injuries are a “direct sensory impact of a change in the physical environment.” *Id.* at 779 (Brennan, J., concurring). The following six stories express some of the negative effects—including direct sensory impacts—proximately related to the change in the physical environment caused by large-scale utility solar projects.⁹

I. Virginia Macha Crossland, Founder of Stand 4 the Land Kansas and Land Owner

Virginia Macha Crossland is the founder of Stand 4 the Land Kansas and a proud landowner in Southeast Kansas. She grew up in Reece, Kansas where they mined zinc. In her

⁹ *Amicus* respectfully asks this Court to review Exhibits 1 and 2 filed with this brief. Exhibit 1 contains a list of ____ signatures from residents across Kansas who support this amicus brief and who ask for an environmental impact study to be done. Exhibit 2 contains transcribed interviews

teen years, she lived in Columbus, Kansas located in the valley of coal strip mines. She thus witnessed at a young age the faces of poverty and despair caused by economic and environmental destruction.

Ms. Macha Crossland's background is in environmental engineering. She knows that having millions of photovoltaic solar panels will turn fertile farm ground into desert, impacting millions of acres of prime farm ground, including destroying generational farms. Further, Kansas counties will face economic hardship because of the property tax abatements, and the burden will fall on the local taxpayers that remain. She worries that towns will dry up and agriculture will become a piece of Kansas history.

She has literally received and heard hundreds of stories from local Kansans pleading with her to help stop the unchecked development of utility solar projects across Kansas. She asks this Court to consider the widespread environmental harm that will come from these solar projects, and require environmental studies be done prior to approval of the Jeffrey Solar Project and others like it.

II. Rodney and Brenda Frey, Generational Family Farmers/Ranchers/Retired Federal Food Inspectors, Ford County, KS

Rodney and Brenda Frey are third generation farmers and ranchers in Ford County, Kansas. The land they farm and raise cattle on has been in Brenda's family since the 1920s. They are concerned that large-scale utility solar projects like the Jeffrey Solar project will have negative impact on the land, environment, and local economy.

They know that agriculture drives the Kansas economy. But agricultural production requires land. Land to raise crops. Land to raise feed. And land to raise livestock. The Freys

providing more depth to the six stories contained in this brief. The exhibit also contains links to the interviews, published on the web, which amicus respectfully asks this Court to watch in their entirety.

worry that taking thousands of acres out of agricultural production and converting them to land for solar energy production will have a devastating impact on the local economy and the livelihoods of local Kansans.

Although proponents of solar energy claim that these projects bring economic development into the area, the Freys disagree. Agriculture has and will continue to be the life blood of Kansas. Solar developers do not typically hire locals for the construction of the solar projects. Instead, they bring experienced crews from other places, who fill up campsites and motels during construction and then when the project is complete are gone.

The Freys took for granted the beautiful, wide open Kansas spaces and horizon with stunning sunrises and sunsets. But then a friend of Brenda's daughter visited from Las Angeles, who maybe had never seen a sunrise or sunset before and was in awe of the wide open expanses. He asked the Freys to wake him up early every morning so he could sit out on the front porch and watch the sunrise. But now the Freys can't look in any direction from their property without seeing blinking lights from wind turbines obstructing the view they once had. They don't want that view further obstructed by solar panels.

Finally, the Freys encourage this Court to take into consideration the impact that solar projects have on hunting. Every time a quarter or a section of land is taken out of agricultural production, or otherwise converted to use for solar, there is no hunting on that land. Not only will the solar projects drive out the deer, pheasants, and other wildlife, but it will diminish hunting rights. Landowners will not want hunting on or near land where there are solar panels for fear of liability. Pheasant and big deer hunting has long been a heritage pastime for locals, and a driver of the local economy that is now being threatened by solar projects.

III. The Melia Family, Generational Family Farmers, Ford County, KS

The Melia family homesteaded in 1884 in Ford County, Kansas and have been continuously farming it ever since, planting their first wheat crop the year they homesteaded.

They worry about weed control on and chemical drift from industrial solar projects. They are also concerned that there have been no studies or assurance that the solar panels will not have a warming effect in Kansas, creating a change in weather patterns and making it even harder to grow crops. The transmission lines needed for wind and solar projects also make it difficult and more dangerous for agricultural aircraft pilots to spray crops.

Douglas Melia also serves as the treasurer of the local township. He worries about what's going to happen with the tax base given the tax abatements granted to the solar projects. Will local landowners' taxes go up because there is less taxable land?

Most importantly, Jean Ann Melia worries that her family's very way of life is being threatened by utility solar. As more and more land is taken out of agricultural production and instead used for solar energy production, she worries that the farm culture her family has lived and celebrated for nearly 150 years is being destroyed.

IV. Diane Denham, Rural Resident Osage County, KS

Diane Denham has lived in Osage County, Kansas for 20 years, moving there to get away from industrialized cities and for the rural, small town feel of the place. She's grateful that Osage County placed a moratorium on industrial solar development. But she worries about the environmental and health risks across Kansas from industrial solar projects in other counties.

She worries about potential toxic water runoff and fires. There is a solar site in Osage County, and the property runs into Malvern Lake where some of the surrounding communities get their water. If the solar panels are damaged by, for example, hailstorms and release toxins

into the ground those toxins could enter Malvern Lake. Further, she is aware that fires are one of risks associated with utility solar projects.

But perhaps most importantly, Ms. Denham is frustrated by how these utility solar projects pit neighbor against neighbor, causing tension in local communities. Some landowners want the payout available to them by leasing their land to solar companies. Others want nothing to do with it. This causes tension among adjacent landowners, tension unnecessarily caused by solar development from people unconnected with the local community.

V. Emilie Carr, Ford City Small System Water Operator, Ford County, KS

Emilie Carr is a Small System Water Operator for the city of Ford, Kansas. In her pastime, she like to go camping, hiking, and kayaking. She doesn't want those activities to be negatively impacted by solar development. She also enjoys seeing all the native wildlife in rural Kansas, including geese, cranes, turtles, and salamanders. The solar panels could change all that, making Kansas less desirable for wildlife.

But her biggest concern is with the water. She knows that there's already a problem with nigh nitrates in the water. Batteries have cobalt and lithium and if those leak out and get into the local aquifer, that's going to be a big problem. She knows that there's a lot of stuff that can affect the aquifer, but that's all happening underground, which nobody really thinks about because its underground.

VI. Harvey Derstein, Farmer and Ford City, KS Councilmember

Harvey Derstein and his family have farmed in Ford City, Kansas for 50 years. He's concerned that people are not adequately accounting for the negative economic impact that large scale utility solar projects will have on small communities. As more and more land is taken out

of agricultural production, the local economy suffers because there is less need for crop consultants, agricultural products, and the like.

Mr. Derstein is particularly concerned about the transmission lines that are needed to carry the electricity generated by solar projects. The towers that carry these lines are 170 feet tall, carrying high voltage. Also, big battery storage is needed to store the electricity, including a 20-acre battery storage facility planned on the corner of highway 71 and 17. Further, these transmission lines are an eyesore. Near Ford from 120 Road East, there are no power lines, no wind turbines or anything else. There's a beautiful, clean looking land all the way into Clark County. But if the transmission lines are installed, that will all be destroyed.

Like others, Mr. Derstein is worried about the risk of fires, especially electrical and battery fires that no one in the local fire department is equipped to handle.

VII. Daniel Kjergaard, rural property owner Osage County, KS

Daniel Kjergaard owns lands in Osage County, Kansas. Based on the research he has done on both wind and solar energy, he is strongly opposed to what developers are trying to do in counties across Kansas. He believes large scale utility solar projects have large negative impacts on both the environment and the local economy.

Regarding the environment, he worries about native wildlife, because solar projects necessarily disrupt native habitat, which has a negative impact on the wildlife. Further, the construction of these solar projects creates topsoil destruction and negatively impacts ground cover, which in turn causes erosion and destruction of the land.

In terms of the economy, Mr. Kjergaard notes that property values are ultimately driven by economics, supply and demand. If solar projects damage the land in and around solar sites, the value of nearby agricultural land will be reduced. Farmers are less likely to want to buy land

near solar projects, because of the potential environmental and health impacts. And livestock producers likewise will be less likely to buy land because of the reduced amount of productive grazing and grass land in the area. Further, people involved in recreational hunting are less likely to invest in the land because of the reduction in wildlife. And finally, people interested in purchasing rural land for residential purposes—because of the beautiful, open countryside—are less interested if the land is adjacent to industrial development. Collectively, the local economy is harmed, and land and property values suffer.

Based on the very real impacts to the economy and environment, Mr. Kjergaard believes environmental impact studies should be done before the approval and construction of any large-scale utility solar projects in Kansas.

CONCLUSION

For the foregoing reasons, and those argued in Plaintiffs’ motion and briefing, this Court should grant the motion for preliminary injunction.

Dated this 17th day of June, 2025.

/s/ Jeffrey A. Wald
Jeffrey A. Wald*
NC State Bar No. 62122
Nelson Mullins Riley & Scarborough LLP
380 Knollwood Street, Suite 530
Winston Salem, NC 27103
Phone: 336-774-3335
Fax: 336-774-3299
jeffrey.wald@nelsonmullins.com

Counsel for _____

*Admitted pro hac vice