

JEFFREY H. WOOD
Acting Assistant Attorney General
Environment & Natural Resources Division

LISA LYNNE RUSSELL, Chief
GUILLERMO A. MONTERO, Assistant Chief
SEAN C. DUFFY (NY Bar. No. 4103131)
MARISSA A. PIROPATO (MA Bar. No. 651630)
CLARE BORONOW (admitted to MD bar)
FRANK J. SINGER (CA Bar No. 227459)
ERIKA NORMAN (CA Bar No. 268425)
Trial Attorneys
Natural Resources Section
601 D Street NW
Washington, DC 20004
Telephone: (202) 305-0445
Facsimile: (202) 305-0506
sean.c.duffy@usdoj.gov

Attorneys for Defendants

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION**

KELSEY CASCADIA ROSE JULIANA, *et al.*, Case No. 6:15-CV-01517-TC

Plaintiffs,

DEFENDANTS' WITNESS LIST

v.

UNITED STATES OF AMERICA, *et al.*,

Defendants.

INTRODUCTION

Defendants maintain that this case should be dismissed. Defendants acknowledge that this Court has disagreed with Defendants' challenges, but respectfully reaffirm their position that this case is improper for several reasons. Among other things, Plaintiffs lack standing to bring this lawsuit, the Administrative Procedure Act requires Plaintiffs' lawsuit to challenge discrete government action or a discrete failure to act, which their complaint fails to do, Plaintiffs' claims infringe on legislative and executive functions that the Constitution assigns to the political branches, and the complaint fails to state legally cognizable theories of recovery. The Ninth Circuit and the Supreme Court contemplated a narrowing of this case before trial, which for the most part has not occurred. Trial is also improper because *de novo* proceedings are presumptively improper in cases governed by the APA's judicial review provisions. Defendants' compliance with Court orders, including the submission of a witness list, should not be viewed as a concession that trial is proper; nor should Defendants' compliance be viewed as a waiver of Defendants' objections to these proceedings.

Defendants intend to introduce the expert and fact witnesses listed below during trial. If called, the witnesses listed below will testify to the facts and opinions as delineated below. Depositions and other discovery are ongoing as of the date of this filing. Accordingly, Defendants reserve the right to supplement this list at a later date. Defendants also reserve the right to not call the witnesses listed below.

EXPERT WITNESSES

Howard Herzog: If called to testify, Mr. Herzog will offer the expert testimony that is memorialized in his expert report. Mr. Herzog's testimony rebuts the conclusion that it is both technologically and economically feasible to transition from a predominantly fossil fuel-based

energy system to a 100 percent renewable energy system for all energy sectors by 2050, with about 80 percent conversion by 2030.

Norman Klein: If called to testify, Dr. Klein will offer the expert testimony that is memorialized in his expert report. Dr. Klein's testimony elaborates on the standard of medical care applicable to Plaintiffs' allegations of respiratory health, and allergy issues. Dr. Klein's testimony further addresses Plaintiffs' experts' discussion of Plaintiffs' alleged respiratory health and allergy issues and climate change.

Arthur Partikian: If called to testify, Dr. Partikian will offer the expert testimony that is memorialized in his expert report. Dr. Partikian's testimony elaborates on the standard of medical care applicable to Plaintiffs' allegations of neurological harm. Dr. Partikian's testimony also addresses Plaintiffs' experts' discussion of Plaintiffs' alleged neurological harm and climate change.

Jeffrey Sugar: If called to testify, Dr. Sugar will offer the expert testimony that is memorialized in his expert report and expert rebuttal report. Dr. Sugar's testimony elaborates on the standard of medical care applicable to Plaintiffs' allegations of psychological harm. Dr. Sugar's testimony also addresses Plaintiffs' experts' discussion of Plaintiffs' alleged psychological harm and climate change.

Daniel Sumner: If called to testify, Dr. Sumner will offer the expert testimony that is memorialized in his expert report. Dr. Sumner's testimony evaluates the policy requirements, the feasibility, and the broader consequences of implementing the land management practices that Plaintiffs' experts' propose.

James Sweeney: If called to testify, Dr. Sweeney will offer the expert testimony that is memorialized in his expert report and expert rebuttal report. Dr. Sweeney will testify to the

objectives that are and have historically been balanced in formulating energy policy, the decarbonization of the U.S. economy over time, the role of federal policies and programs in the decarbonization of the U.S. economy over time, the role of federal policies and programs in the energy-related carbon intensity of the U.S. economy over time, the federal government's consideration of the policy proposals Plaintiffs and their experts propose, the relationship between the federal government's greenhouse gas emissions and Plaintiffs' alleged harms, and the technical feasibility and efficacy of Plaintiffs' experts' proposed changes to U.S. energy policy.

David Victor: If called to testify, Dr. Victor will offer the expert testimony that is memorialized in his expert report. Dr. Victor will assess Plaintiffs' experts' opinions on the U.S. share of greenhouse gas emissions and the feasibility of transitioning to a consumption-based accounting system. Dr. Victor will also address the impacts that Plaintiffs' experts' proposed reforms to fossil fuel subsidies and leases would have on greenhouse gas emissions. And Dr. Victor will address Plaintiffs' experts' conclusions on the federal government's role in the use of fossil fuels in the U.S. economy and the United States' need to engage international trading partners to adopt meaningful policy interventions to address climate change.

John Weyant: If called to testify, Dr. Weyant will offer the expert testimony that is memorialized in his expert report. Dr. Weyant will address the scope of conclusions on attribution and the results of different climate modeling runs that explore different U.S. emission scenarios.

FACT WITNESSES

Rebecca Patton: If called to testify, Ms. Patton will offer testimony to authenticate documents on behalf of the United States Department of Defense and other testimony in relation to those documents.

Marissa McInnis: If called to testify, Ms. McInnis will offer testimony to authenticate documents on behalf of the United States Department of Defense and other testimony in relation to those documents.

Kathleen White: If called to testify, Ms. White will offer testimony to authenticate documents on behalf of the United States Department of Defense and other testimony in relation to those documents.

Jerry Drake: If called to testify, Mr. Drake will offer testimony to authenticate documents on behalf of the United States Department of State and other testimony in relation to those documents.

Eric Boyle: If called to testify, Mr. Boyle will offer testimony to authenticate documents on behalf of the United States Department of Energy and other testimony in relation to those documents.

William Hohenstein: If called to testify Mr. Hohenstein will offer testimony to authenticate documents on behalf of the United States Department of Agriculture and other testimony in relation to those documents.

Daniel Conrad: If called to testify, Mr. Conrad will offer testimony to authenticate documents on behalf of the United States Environmental Protection Agency and other testimony in relation to those documents.

Howard C. Sun: If called to testify, Mr. Sun will offer testimony to authenticate documents on behalf of the United States Council on Environmental Quality and other testimony in relation to those documents.

Benjamin Simon: If called to testify, Mr. Simon will offer testimony to authenticate documents on behalf of the United States Department of the Interior and other testimony in relation to those documents.

William Sweet, Ph.D.: If called to testify, Mr. Sweet will offer testimony to authenticate documents on behalf of the United States Department of Commerce and other testimony in relation to those documents.

Michael Kuperberg, Ph.D.: If called to testify, Dr. James Michael (“Michael”) Kuperberg will offer testimony to authenticate documents on behalf of the United States Office of Science and Technology Policy. In addition, Dr. Kuperberg will offer testimony to authenticate documents on behalf of the United States Global Change Research Program (USGCRP) and other testimony in relation to those documents.

Darren Timothy: If called to testify, Mr. Timothy will offer testimony to authenticate documents on behalf of the United States Department of Transportation and other testimony in relation to those documents.

Cheryl MacKay: If called to testify, Ms. MacKay will offer testimony to authenticate congressional documents on behalf of the United States as well as a summary of those documents pursuant to Fed. R. Evid. 1006.

Dated: October 15, 2018

Respectfully submitted,
JEFFREY H. WOOD
Acting Assistant Attorney General
Environment & Natural Resources Division

/s/ Sean C. Duffy

LISA LYNNE RUSSELL

GUILLERMO A. MONTERO

SEAN C. DUFFY (NY Bar No. 4103131)

MARISSA PIROPATO (MA Bar No. 651630)

CLARE BORONOW (admitted to MD bar)

FRANK J. SINGER (CA Bar No. 227459)

ERIKA NORMAN (CA Bar No. 268425)

U.S. Department of Justice

Environment & Natural Resources Division

Natural Resources Section

601 D Street NW

Washington, DC 20004

Telephone: (202) 305-0445

Facsimile: (202) 305-0506

sean.c.duffy@usdoj.gov

Attorneys for Defendants