

No. 18-36082

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

KELSEY CASCADIA ROSE JULIANA, et al.,
Plaintiffs-Appellees,

v.

UNITED STATES OF AMERICA, et al.,
Defendants-Appellants.

On Appeal from the United States District Court
for the District of Oregon (No. 6:15-cv-01517-AA)

**APPELLANTS' RESPONSE TO APPELLEES'
SUPPLEMENTAL MOTION SEEKING JUDICIAL NOTICE**

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On December 20, 2019, Plaintiffs moved this Court take judicial notice of 13 documents that Plaintiffs assert “are publicly available government documents and sources hosted on official government websites,” which they claim support their motion for an injunction pending appeal. Motion at 3.

This Court may “take judicial notice of official information posted on a government website, the accuracy of which is undisputed.” *Arizona Libertarian Party v. Reagan*, 798 F.3d 723, 727 n.3 (9th Cir. 2015) (internal quotation marks and alteration omitted). For that reason, Defendants do not oppose the Court’s taking judicial notice of the existence of all proffered documents save Exhibit 22, which is not an official government document.¹ Exhibit 22 is an article written by more than 50 authors, only one of whom was a United States government employee. Although a link to the article is included on the website of the National Institutes of Health, the article itself was published in the medical journal *The Lancet*. Judicial notice of that document is therefore improper.

Although Defendants do not oppose Plaintiffs’ request that the Court take notice of the other documents, those documents underscore that Plaintiffs should be filing actions pursuant to the Administrative Procedure Act (APA), 5 U.S.C. §§ 701

¹ See Nick Watts et al., *The 2019 Report of The Lancet Countdown on Health and Climate Change: Ensuring that the Health of a Child Born Today is Not Defined by a Changing Climate*, 394 *The Lancet* 1836 (2019), <https://www.ncbi.nlm.nih.gov/pubmed/31733928>.

et seq., or other more targeted judicial review provisions such as the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. § 1349. *See* Gregory Declaration 4, 5 (referring to oil and gas leases in the Gulf of Mexico issued under the Outer Continental Shelf Oil and Gas Leasing Program); *see also* Reply Brief 19 (discussing OCSLA).

Indeed, most of the documents cited by Plaintiffs describe oil and gas leases issued by the Department of the Interior, *see, e.g.*, Exhibits 13, 15; the sale of permits to drill on federal lands, *see, e.g.*, Exhibit 14; and decisions authorizing the interstate and international transport of fossil fuels, *see, e.g.*, Exhibit 20. Congress afforded causes of action under the APA and other statutes providing for judicial review to challenge those sorts of agency actions. Opening Brief 28. If Plaintiffs take issue with those actions, then Plaintiffs may challenge them pursuant to those causes of action and make their constitutional and public trust arguments in those contexts. *Id.* But they may not choose instead to proceed directly under the Constitution or under the district court's equitable authority. *See* Appellants' Opposition to Motion for Preliminary Injunction Pending Appeal 11-13; *see also* Opening Brief 27-35; Reply Brief 18-23; Oral Argument at 2:35-3:40, 19:15-19:45, 51:50-55:30.²

In sum, Plaintiffs do not enhance their case for equitable relief in this Court through a constant stream of judicial notice filings. As explained, Congress has

² https://www.ca9.uscourts.gov/media/view_video.php?pk_vid=0000015795.

provided Plaintiffs, through the APA and other statutes, channeled opportunities to seek judicial review and consequent injunctive relief. Plaintiffs might not wish to pursue those remedies, but “equity follows the law.” *In re Shoreline Concrete Co.*, 831 F.2d 903, 905 (9th Cir. 1987). This case can be resolved on the record before the Court. There is no need to continuously expand the universe of documents before this Court.

Dated: December 27, 2019

Respectfully submitted,

s/ Eric Grant

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