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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

KELSEY CASCADIA ROSE JULIANA; **XIUHTEZCATL TONATIUH M.**, through his Guardian Tamara Roske-Martinez; *et al.*,

Plaintiffs,

v.

The UNITED STATES OF AMERICA; **DONALD TRUMP**, in his official capacity as President of the United States; *et al.*,

Federal Defendants.

Case No.: 6:15-cv-01517-TC

JOINT STATUS REPORT AS OF APRIL 3, 2017

At the Rule 16 Conference on February 7, 2017, the Court and counsel for the parties agreed to monthly status conferences, where the Court would be apprised on the status of discovery and counsel for the Parties would bring new matters to the Court's attention. Counsel for the parties have conferred on the following issues: the Intervenor Defendants' Answer and Plaintiffs' Request for Admissions related to the Federal Defendants' Answer; the pending Motions to Certify and Stay; Requests for Production; Requests for Admissions; Initial Expert Disclosures; and Future Fact Discovery.

The Parties hereby submit their Joint Status Report.

1. The Intervenor Defendants' Answer

A. Plaintiffs' Section:

By denying virtually all of the First Amended Complaint's allegations of fact based on alleged lack of sufficient information and knowledge, the answer filed by the Intervenor Defendants on December 15, 2016 did nothing to narrow disputed issues of fact. During the February 7 and March 8 Status Conferences, the Court raised concerns that denials by the Intervenor-Defendants (based on insufficient information or belief) in their answer could impede Plaintiffs' ability to prove their claims, if the Intervenor-Defendants were to challenge issues that the Federal Defendants admitted in their answer to the First Amended Complaint. To date, counsel for the Intervenor Defendants have refused to take a position, stating that he "did not know" what position the Intervenor Defendants would take as to matters admitted by the Federal Defendants. There remains no firm answer to the Court's question: Whether the Intervenor Defendants will contest admissions that the United States makes in this litigation?

On February 15, 2017, counsel for Plaintiffs wrote counsel for the Intervenor Defendants about the deficiencies in the answer and attached a summary of the

admissions made by Federal Defendants in their answer to Plaintiffs' First Amended Complaint. On March 24, 2017, Plaintiffs propounded Requests for Admissions directed to the central allegations in the First Amended Complaint, which Federal Defendants admitted and the Intervenor Defendants claimed a "lack of sufficient knowledge to admit or deny."

B. Intervenor Defendants' Section:

Intervenor Defendants' Answer complies with all requirements of the Federal Rules. At a previous status conference, the Court suggested that Plaintiffs could use Requests for Admission to seek to narrow the disputed facts at issue in the case. On March 24, 2017, Plaintiffs' served nearly 100 Requests for Admission, and Intervenor Defendants are in the process of responding to those requests. While Intervenors continue to believe that their position on the allegations in the First Amended Complaint is not relevant to any of plaintiffs' claims, these responses should help narrow the disputed issues, insofar as possible, in the manner suggested by the Court.

2. Motions to Certify and for a Stay

A. Plaintiffs' Section:

Both the Federal Defendants and the Intervenor Defendants have filed Motions for: Interlocutory appeal and stay pending appeal; Expedited consideration of the motion for interlocutory appeal; and a stay of all discovery during the pendency of the interlocutory appeal process and expedited hearing on that motion to stay.

Plaintiffs' oppositions to these motions are due April 3, 2017.

If this Court sets Defendants' Motions to Certify and to Stay for oral argument, Plaintiffs would request that the hearing be conducted in person, with the availability of

counsel to appear by telephone if they so wish. Counsel for Plaintiffs are unavailable for a hearing from April 21 to April 28.

B. Federal Defendants' Section:

Federal Defendants will file a reply brief in support of their motion for interlocutory appeal on April 10. 2017. Federal Defendants initially requested a decision on these motions by April 10, but the Plaintiffs sought and received a two-week extension of their response deadline. Federal Defendants now request a decision by April 17. Federal Defendants' believe that the issues briefed are familiar to the Court and the parties and therefore additional oral argument is unnecessary. Expedited consideration is requested because the proceedings in this case — and particularly the significant discovery burden— continue to disrupt normal agency operation.

C. Intervenor-Defendants' Section:

Intervenors believe that time is of the essence in ruling on the motions for interlocutory appeal. Intervenors do not believe a hearing is necessary but of course will participate if the Court believes that a hearing would be helpful to its consideration of the pending motions. Intervenors will file their reply brief in support of the motion for interlocutory appeal on April 10, 2017.

3. Discovery Issues

A. Plaintiffs' Section:

Simplifying Discovery: Plaintiffs have received this Court's guidance that the goal is to simplify this case from a case management perspective. As this Court stated at the February 7 Status Conference: "this case is mainly going to be guided by expert testimony in terms of the main issue." On March 24, 2017, Plaintiffs commenced early disclosure of their expert witnesses by identifying their experts and providing short summaries of the

content of their experts' testimony. Plaintiffs will disclose additional experts on a rolling basis if necessary, as discovery proceeds. Plaintiffs have also been serving focused document requests on Defendants. Plaintiffs intend to have completed all initial requests for production of documents by April 7, 2017. On March 24, 2017, pursuant to Local Rule 30-2, Plaintiffs also initiated a meet and confer process on Defendant depositions Plaintiffs intend to notice, by providing counsel for Defendants a list of deponents.

Phased Discovery: Discovery will focus primarily on two aspects of the case: (a) Defendants' knowledge that key federal policies and decisions were made in knowing disregard of their climate consequences; and (b) climate science. Plaintiffs do not believe discovery should be conducted in phases or be limited to or focused on particular issues.

Status of Discovery Propounded to date:

To date, Plaintiffs have propounded the following discovery:

DATE PROPOUNDED	DATE RESPONSES DUE	PARTY OR PARTIES	TITLE	STATUS
12/28/2017		API	Plaintiffs' Notice of Deposition of Rex Tillerson	To be re- noticed
1/20/2017	5/6/2017	EOP, EPA	First Set of Requests for Admission to Defendants Executive Office of the President and the Environmental Protection Agency	On March 7, 2017, Plaintiffs sent additional definitions for these Requests for Admission.
2/17/2017	3/23/2017	API	Request for Production of Documents to American Petroleum Institute	On March 20, 2017, Intervenor Defendants responded without producing any documents, only serving objections.
2/21/2017	5/6/2017	All Federal Defendants	Requests for Production of Documents to Federal Defendants (documents from Presidential Libraries)	
3/7/2017	4/6/2017	All Intervenor Defendants	Request for Production of Documents	
3/7/2017	5/6/2017	All Federal Defendants	Second Set of Requests for Production of Documents to	

			Federal Defendants (documents from Presidential Libraries)	
3/7/2017	5/6/2017	EOP, DT	Request for Production of Documents to Defendants Executive Office of the President and President Donald Trump	
3/17/2017	4/16/2017	API	Third Set of Requests for Production of Documents to American Petroleum Institute (re: "Wayne Tracker" emails)	
3/17/2017	5/16/2017	All Federal Defendants	Third Set of Requests for Production of Documents to Federal Defendants (re: "Wayne Tracker" emails)	
3/24/2017	4/23/17	All Intervenor Defendants	Request for Admission to Intervenor Defendants	
3/31/2017	5/1/2017	USDA	Request for Production of Documents to Defendant United States Department of Agriculture	
3/31/2017	5/1/2017	USDOD	Request for Production of Documents to Defendant United States Department of Defense	
3/31/2017	5/1/2017	State	Request for Production of Documents to Defendant United States Department of State	

Informal Methods of Obtaining Information: In developing their discovery plan, Plaintiffs have been conducting informal discovery in order to limit the scope of formal discovery. To ensure ongoing access to data and information relevant to Plaintiffs' claims from Defendants, on January 24, 2017, counsel for Plaintiffs sent a document preservation and litigation hold letter to all Defendants. Defendants have yet to provide any written response to the January 24, 2017 letter. Plaintiffs continue to request assurance that counsel for Defendants have taken the appropriate steps to insure that all potentially relevant information and data have been and are being preserved.

Specifically, Plaintiffs have requested that Defendants produce the document preservation/litigation hold letters that counsel for Defendants have stated were sent by the

General Counsels to the various Defendant Departments and Agencies. Plaintiffs seek to review these letters in an effort to ensure that direction given to Defendants is adequate and to address counsel for Defendants' concerns about the breadth of Plaintiffs' litigation hold/document preservation letter. Defendants have not produced any of these letters.

Discovery as to the Intervenor Defendants: The Intervenor Defendants take the position that they should not be subject to fact discovery. In a Status Report, the Intervenor Defendants stated they "do not intend to propound fact discovery (document production request, interrogatories, requests for admission) to either the Plaintiffs or the Federal Defendants." The Intervenor Defendants indicated they would, however, engage in expert discovery. Plaintiffs believe the Intervenor Defendants should be subject to discovery as parties. That is the basis on which they intervened in this case: "Proposed Intervenor-Defendants should also be allowed to participate as full parties with no court-imposed limits on discovery, briefing page limits, or agreements not to address the same arguments as Defendants make." Reply in Support of Proposed Intervenor-Defendants' Motion to Intervene, ECF 37 at 17. Because the Intervenor Defendants sought "to intervene in all phases of litigation asserting that once liability is established, the harm to their interests will be complete" (ECF 50 at 4), the Intervenor Defendants should be subject to fact discovery.

Resolving Discovery Disputes: Plaintiffs request guidance from the Court on handling discovery issues going forward. For example, Plaintiffs propounded Requests for Production on the Intervenor Defendants. On March 20, 2017, the Intervenor Defendants responded without producing any documents, only serving numerous objections. A copy of that response is attached as **Exhibit 1**. While Plaintiffs will meet and confer with the Intervenor Defendants, assuming that issues remain, should

Plaintiffs then proceed by way of a Motion to Compel under Local Rules 26-3 and 37, a letter brief, or a telephone conference?

B. Federal Defendants' Section:

Discovery in this matter should temporarily be held in abeyance. There are two principal grounds for this proposed suspension of discovery.

First, all discovery in this matter should await a decision by the Court on Federal Defendants' Motion for Interlocutory Appeal and Motion to Stay (ECF Nos. 120 & 121). Federal Defendants request a decision on these motions by April 17. Resolution by the Ninth Circuit Court of Appeals of the controlling questions raised by Federal Defendants' Motion for Interlocutory Appeal in favor of the United States would dispose of the claims before the Court. Discovery in such a case would not merely be unnecessary but improper in the first instance. Given that the legal issues presented in Federal Defendants' Motion for Interlocutory Appeal are dispositive, it is entirely proper for discovery to await their resolution.

Second, Plaintiffs have not made any serious effort to narrow the scope of discovery. As discussed below, the discovery propounded to date — and the discovery that Plaintiffs have indicated they intend to propound in the future — is extraordinarily broad and intrusive, and will unnecessarily draw out the discovery process. Plaintiffs' proposed inquiry into decades of information related to climate change would require substantial effort and would place an undue burden on the agencies that gather and analyze climate-change related data. Moreover, Plaintiffs' have indicated that they intend to notice the deposition of twelve 30(b)(6) depositions, including a 30(b)(6) deposition on the Executive Office of the President.

In addition, Plaintiffs have indicated that they intend to depose four Cabinet-level

Secretaries (or the equivalent) and other high level Executive branch officials. This is entirely improper. Depositions of high level executive officials are impermissible absent "extraordinary circumstances," that is, only when the party seeking testimony establishes that the official's testimony is both essential to the case and not obtainable from another source. Moreover, all discovery propounded on the Office of the President and other components of the Executive Office of the President lacks foundation given that a suit directly against the President for injunctive relief cannot lie. (ECF No. 120-1 at 17). In short, because discovery in this matter will impose immense burdens, it should await the resolution of Federal Defendants' Motion for Interlocutory Appeal and Stay.

At the very minimum, the Court should move all outstanding discovery deadlines to May 8. This would allow time for the resolution of Federal Defendants' Motion for Interlocutory Appeal and Stay and could alleviate the immediate press of the massive discovery burden imposed by Plaintiffs' outstanding requests.

Fact Discovery

To date, Plaintiffs propounded on Federal Defendants: (1) Requests for Admission (responses due May 8); and (2) four Requests for Production (responses due May 8 and April 17). Federal Defendants continue to coordinate with their agency clients and the National Archives and Records Administration (NARA) on responding to these requests. In connection with two of the outstanding Requests for Production, Plaintiffs seek documents from Presidential libraries that are (1) covered by the Presidential Records Act and that may not be disclosed absent a waiver from the current White House and the White House from which the document originated; (2) classified materials that must undergo a lengthy declassification process before production; and (3) EPA records that NARA has not yet processed. With respect to the EPA records, NARA has determined that there are 388

cubic feet of records that are available in College Park, Maryland. Federal Defendants continue to work with NARA and will update Plaintiffs on a rolling basis as the status of the documents are determined and, where applicable, the production timeline is available.

On March 7, Plaintiffs propounded a third set of Requests for Production on President Donald J. Trump and the Executive Office of the President that demand, among other things, each document that "refers, relates, regards, or pertains to the issue of climate change" over numerous Presidential administrations. ECF No. 126-1. Federal Defendants' deadline to respond is May 8. As previously noted, for that request alone, the process of identifying, reviewing, and producing responsive documents will immediately require an enormous investment of time and resources that cannot feasibly be accomplished in an abridged period of fact discovery. ECF No. 126.

On March 17, Plaintiffs propounded a fourth set of Requests for Production to Federal Defendants and the American Petroleum Institute, an Intervenor-Defendant, requesting documents and communications that refer, relate, regard or pertain to climate change and energy policy between any Federal Defendant – defined broadly to include all employees of the Federal Defendants – and Rex Tillerson, including emails sent to or received from his alleged email address Wayne.Tracker@exxonmobil.com. Federal Defendants' deadline to respond is April 17.

In addition to the formal discovery discussed above, on March 24, Plaintiffs sent a "Meet and Confer" letter to Federal Defendants identifying six fact depositions and twelve 30(b)(6) depositions they propose scheduling. Specifically, Plaintiffs seek the depositions of the following agency heads: (1) Secretary Rex Tillerson (United States Department of State); (2) Administrator Scott Pruitt (EPA); (3) Secretary Rick Perry (United States Department of Energy); and (4) Secretary Ryan Zinke (United States Department of the

Interior). Plaintiffs also seek to depose two other officials: (5) C. Mark Eakin, Coordinator of National Ocean and Atmospheric Administration's Coral Reef Watch program, Satellite Oceanography & Climatology Division and (6) Michael Kuperberg, Executive Director, United States Global Change Research Program. With respect to the proposed 30(b)(6) depositions, Plaintiffs list twelve agencies and/or executive components that they seek to depose but do not indicate the proposed topics for such depositions.

Federal Defendants are conferring with their clients concerning Plaintiffs' proposed depositions. Federal Defendants note, however, it is an extraordinary and highly unusual measure to seek the deposition of a Cabinet-level Secretary and that such a demand —if made— requires a showing of exceptional circumstances. Federal Defendants further note that it will not be possible to meaningfully confer regarding the proposed 30(b)(6) depositions of 12 federal agencies until Plaintiffs identify the topics on which they will be seeking testimony; particularly because experience demonstrates that, depending upon the breadth of the topics, multiple deponents are often necessary to provide 30(b)(6) testimony on behalf of a single federal agency.

Finally, Federal Defendants continue to work with each of their clients on document preservation and have begun bi-weekly meetings with their clients to remain apprised of ongoing document preservation efforts. However, Federal Defendants do not agree that Plaintiffs are entitled to review letters containing guidance from Department of Justice counsel to the defendant agencies, as those letters are protected by the attorney-client privilege.

Expert Discovery

On March 24, Plaintiffs provided Federal Defendants with a list of eleven experts across numerous disciplines whom Plaintiffs may proffer under Fed. R. Civ. P. 26(a)(2).

Plaintiffs have also reserved the right to introduce new experts at a subsequent date. Given the immense scope of Plaintiffs' expert designations, Federal Defendants are, among other things, coordinating with their clients to identify appropriate rebuttal experts.

C. Intervenor Defendants' Section :

As Plaintiffs have stated, this action "relate[s] solely to harm caused by the actions (or inactions) of the Federal Defendants." Dkt. 33 at 19. Their Complaint "does not allege private parties, such as the [Intervenors], have any constitutional or public trust fiduciary obligations to Youth Plaintiffs." Id. at 17. The Intervenors were permitted to intervene in this case to protect their members' interests with regard to the alleged future damages and proposed remedies, but their presence in the case does not somehow convert irrelevant inquiries into permissible discovery. The discovery sought thus far by the Plaintiffs is improper and only adds needless complication and expense to a case that must be streamlined to have any chance of resolution in a reasonable timeframe.

Although the Plaintiffs give a passing acknowledgment to this Court's recognition that the case is "mainly going to be guided by expert testimony" and that the Court's goal is to "simplify the case from a case management perspective," Plaintiffs have done nothing of the sort.

For example, Plaintiffs have informed Defendants of their intent to immediately depose the Secretary of State, Administrator of the EPA, Secretary of Energy, Secretary of the Interior, Coordinator of NOAA, Executive Director of the U.S. Global Change Research Program, and 11 additional 30(b)(6) witnesses. They also seek to depose the CEO of API, the President of AFPM, the Director of NAM, and other witnesses from those entities.

Plaintiffs also say that they have served and will continue to serve "focused document requests." Yet, thus far, Plaintiffs have served dozens of requests for production,

many with no time limitation at all, and all of which seek documents not even potentially relevant here. For example,

- Plaintiffs' seek every document related to the membership of the Intervenor associations from their inception to today. For these associations, this will be decades of information and includes thousands of different members. It would be impossible for the associations to provide lists of all historical members and it would also be irrelevant. Plaintiffs have no basis to suggest that the name of every member—and every document related to their membership—is relevant to this case. Moreover, discovery into these sorts of matters is restricted by the First Amendment.
- Plaintiffs also seek every document related to API's computer systems and electronic data without any time limitation. This would include purchase orders, IT service information, and computer hardware specifications. Again, this sort of material is not relevant under any standard to any issue in this case.
- Plaintiffs also seek all documents related to the tax-exempt status of the Intervenor associations. The tax status of the associations is not at issue or of any relevance to Plaintiffs' claims.

These are just three examples of the egregious discovery requests, but they serve to highlight the irrelevant and overreaching nature of Plaintiffs' discovery.

This case is about laws and regulations enacted by the federal Defendants and scientific and economic information, which, as the Court said, will be mainly "guided by expert testimony." The conduct or knowledge of the Intervenor-Defendants is not relevant to any claim or any defense in this case. Intervenor-Defendants intervened in this action in

order to address expert issues regarding the alleged future impact of GHG emissions and the costs and benefits of proposed future remedies, including the legal sufficiency of the claims underlying those remedies. As the Court noted in granting the motion to intervene:

> Plaintiffs seek to phase out fossil fuel emissions. Proposed intervenors produce and/or rely on those fossil fuels. There is no question that the interests of proposed intervenors would be impaired through court mandated regulation that has the goal of eliminating emissions altogether.

Intervenors can and will respond to reasonable and appropriate discovery requests related to the matters actually at issue in this case for which intervention was granted by this Court.

Resolving Discovery Disputes

Plaintiffs have served broad and burdensome discovery requests on the Intervenor Defendants. Pursuant to Rule 26, Intervenor Defendants plan to file a motion for an order to put an end to Plaintiffs' harassing discovery practices. Intervenor Defendants will use a different procedure if the Court prefers another method to resolve the current and likely ongoing disputes.

4. Scheduling

A. Plaintiffs' Section:

Given the urgency of the climate crisis and in light of the well-publicized fact that the Federal Defendants are acting now to accelerate fossil fuel development, Plaintiffs are prepared to promptly complete discovery and will be ready for a court trial by November 2017. The Federal Defendants seek to delay discovery and trial. For example, the Federal Defendants suggested that fact discovery should remain open until 2019, ***over two years*** after this Rule 16 Conference and ***almost four years*** after the Complaint was filed and served.

PROPOSED DATES FOR THE SCHEDULING ORDER

April 24, 2017	DEFENDANTS' INITIAL DISCLOSURE OF EXPERTS
June 23, 2017	DISCOVERY MOTIONS ARE DUE TO BE FILED.
July 14, 2017	NON-EXPERT DISCOVERY IS TO BE COMPLETED.
June 23, 2017	EXPERT DISCLOSURES ARE DUE.
July 28, 2017	EXPERT DISCOVERY TO BE COMPLETED.
August 31, 2017	DISPOSITIVE MOTIONS ARE DUE TO BE FILED.

THE PRETRIAL ORDER IS DUE 45 DAYS AFTER DISPOSITIVE MOTIONS HAVE BEEN RULED ON OR BY **SEPTEMBER 8, 2017** IF NO DISPOSITIVE MOTIONS ARE FILED.

THE JOINT ADR REPORT IS DUE 45 DAYS AFTER DISPOSITIVE MOTIONS HAVE BEEN RULED ON.

B. Defendants' Section:

Plaintiffs' proposed schedule is wholly infeasible. Plaintiffs' suggestion that expert and fact discovery on over six decades of information and on complex scientific topics can occur in a matter of mere months is without precedent. Plaintiffs' actions make plain that they themselves are not serious about the very schedule they propose. The discovery Plaintiffs have thus far propounded or indicated that they intend to propound in the future reflects an extraordinarily intrusive and an exceptionally expansive discovery process. For example, Plaintiffs have indicated that they intend to notice at least twelve 30(b)(6) depositions with an as-yet undisclosed number of topics for each such deposition. If those topics parallel the scope of the requests for production and the requests for admission already propounded, the resources required to prepare and defend such depositions will be immense. Moreover, if Plaintiffs' January 24 Litigation Hold Letter is any indication, the

scope of the topics in those 30(b)(6) depositions could be sweeping in their breadth. In that letter, Plaintiffs demand that Federal Defendants preserve any and all documents and records related to the claims in the complaint, including, *inter alia* all documents and records "related to climate change since the Federal Defendants or the Intervenor Defendants (and their member companies) became aware of the possible existence of climate change." Pls.' Jan. 24, 2017 Litigation Hold Demand Letter at 5 (attached as Ex. A). Plaintiffs cannot have it both ways: they cannot seek a trial of this magnitude but propose a timeframe more appropriate for a simple tort action. In light of this, and in light of the pending Motion for Interlocutory Appeal, Federal Defendants believe that it is premature to establish a schedule for discovery at this juncture.

C. <u>Intervenor-Defendants' Section</u>:

Given the broad swath of discovery Plaintiffs seek, Intervenor-Defendants do not view Plaintiffs' proposal as realistic or achievable. The discovery sought against the federal defendants alone would likely take at least two years to complete. Because there are dispositive issues to present to the Court of Appeals at this time, discovery should be stayed until those issues can be decided.

<u>DISCOVERY PLAN</u>

A. <u>Plaintiffs' Section:</u>

<u>Initial disclosures</u>: Plaintiffs do not believe that initial disclosures need to be exchanged.

<u>Phased Discovery</u>: Plaintiffs do not believe that discovery should be conducted in phases or be limited to or focused on particular issues.

<u>Number of Depositions</u>: Plaintiffs believe ten depositions per side would be insufficient to provide full discovery in this case. It is important that Plaintiffs have an

opportunity to thoroughly develop a complete record through discovery and be able to identify the most knowledgeable witnesses. Not only will this allow Plaintiffs to present a case before the Court at trial as completely and efficiently as possible, it will narrow the issues.

To achieve these general goals, Plaintiffs believe the specifics of this case require 35 substantive fact depositions per side. Given the number of federal agency defendants and third parties who possess discoverable information, including companies doing business in the fossil fuel industry and consultants to the Federal Defendants and the Intervenor Defendants, Plaintiffs respectfully request this Court order that, absent good cause shown, and notwithstanding Federal Rule of Civil Procedure 30(a)(2)(A)(i), the parties may take up to, but no more than, 35 depositions per side (excluding experts). For the purpose of this request, a deposition of a party or non-party taken pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure shall count as one deposition, regardless of the number of witnesses presented to address the matters set forth in the notice. Additionally, depositions taken for the sole purpose of establishing the authenticity and admissibility of documents should not count against the 35 deposition limit. Finally, Plaintiffs believe each Party should have an opportunity to take the deposition of any individual who appears on the other Party's Federal Rule of Civil Procedure 26(a)(3) pretrial disclosures, without regard to whether the allotted depositions have been exhausted, so long as the deposing party did not have reasonable notice that the person might be a trial witness and so long as the person was not previously deposed.

Number of Interrogatories/Requests for Production/Requests for Admission: Plaintiffs believe that each party should be allowed to propound the following discovery to each other party: 100 interrogatories, 200 document requests, and unlimited requests

for admission.

Electronically Stored Information (ESI): Plaintiffs have complied with the requirements of LR 26-1 concerning ESI. Plaintiffs propose the parties agree and the Court enter a stipulation similar to the form attached hereto as **Exhibit 2**.

B. Defendants' Section:

As discussed above, it is premature to establish a schedule for discovery at this juncture. In light of the exceptional burden on Federal Defendants posed by these requests, discovery[1] should be held in abeyance until this Court resolves Federal Defendants' Motion for Interlocutory Appeal and Stay. Alternatively, all discovery deadlines should be moved to May 8, 2017.

C. Intervenor-Defendants' Section:

Plaintiffs' unreasonable and unrealistic approach to discovery is revealed by their discovery plan, in which they propose the Parties to complete, by July 14, 2017, fact discovery, which Plaintiffs claim should include "100 interrogatories, 200 document requests, and unlimited requests for admission" and up to 35 individual fact depositions, including 30(b)(6) depositions where a noticed 30(b)(6) deposition "shall count as one deposition, regardless of the number of witnesses presented to address the matters set forth in the notice." And, that is just the Plaintiffs' fact discovery. A case of this magnitude would take at least two years to get ready for trial and cost millions of dollars in the process. All of this time, money, and effort will be wasted if, on appeal, the Ninth Circuit Court of Appeals finds that the Plaintiffs' suit is barred for the reasons stated in the Federal Defendants' and Intervenor-Defendants' Motions for Interlocutory Appeal. The Intervenor-

[1] By discovery, Federal Defendants specifically refer to requests for production, requests for admissions, interrogatories and depositions. Federal Defendants are complying with appropriate document preservation obligations.

Defendants submit to the Court that Plaintiffs' proposed discovery plan highlights the need for immediate appellate review and a stay of discovery.

JOINT STATUS REPORTS

A. Plaintiffs' Section:

This Court previously ordered the parties to meet and confer and submit a Joint Status Report. On Wednesday, March 29, Plaintiffs circulated their section of this Joint Status Report. Plaintiffs did not receive the Federal Defendants' sections until March 31 and did not receive the Intervenor Defendants' sections until April 3. A copy of those emails are attached as **Exhibit 3**. Further, during a purported "meet and confer" telephone conference on March 31, 2017, counsel for both sets of Defendants said they did not have approval from their clients to share their sections of the joint report with Plaintiffs. Instead, Intervenors requested additional time to exchange their sections for the joint report. As a result, Plaintiffs were unable to meaningfully meet and confer regarding Defendants' sections before submission of this Joint Status Report. Plaintiffs would request this Court issue an order along the following lines: (1) At least 10 days before a Joint Status Conference, the parties will exchange their respective sections of the Joint Status Report: (2) At least 8 days before the Joint Status Conference, counsel for the parties shall meet and confer about any issues to be raised in the Joint Status Conference; and (3) At least 7 days before a Joint Status Conference, the parties shall submit a Joint Status Report.

B. Federal Defendants' Section:

Federal Defendants have agreed to file a Joint Status Report one week prior to status conferences to give the Court the opportunity to understand the parties' positions prior to the hearing. Federal Defendants will continue to agree to this or any other arrangement that facilitates the Court's understanding of the issues. However, Federal Defendants do not

believe that it is helpful or conducive to resolution of the issues to have the Court's active involvement in regulating the time and manner of conferral among counsel in the manner that Plaintiffs propose. Nor would this approach suit the needs of either the Court or the parties. Plaintiffs continue to propound discovery on a rolling basis and not on any particular schedule so far as Federal Defendants can discern. Indeed, in this case, Plaintiffs propounded substantial Requests for Production on the Department of State, the Department of Defense, and the Department of Agriculture on the evening of Friday, March 31, after the close of business in Washington, D.C.

While Plaintiffs' claim that they were unable to meaningfully meet and confer prior to filing this Joint Status Report, this claim is not supported by the facts. Counsel for Federal Defendants met and conferred with Plaintiffs in good faith on two occasions—on Thursday, March 30, and again on Friday, March 31. And in the latter case, Federal Defendants agreed to confer at a time that presented a conflict for Federal Defendants' undersigned counsel in order to accommodate Ms. Olson's schedule. Federal Defendants have and will continue to meet and confer in good faith going forward.

C. Intervenor-Defendants' Section:

The Intervenor-Defendants agree with the position of the Federal Defendants as set forth above. The Intervenor-Defendants will participate in any case management procedure that would be helpful to the Court, but do not believe having Court involvement in the time and manner of conferrals among the Parties will be productive. The impediment to meaningful conferrals among the Parties at this juncture is the fundamental disagreement between the Plaintiffs and the Defendants regarding the appropriate scope of discovery in this case.

Dated: April 3, 2017

By: /s/*Julia A. Olson*
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ATTESTATION OF FILING

I, Julia A. Olson, hereby attest, pursuant to District of Oregon, Local Rule 11(d), that consent to the filing of this document has been obtained from each signatory hereto.

/s/ *Julia A. Olson*
JULIA A. OLSON