

JULIA A. OLSON (OR Bar 062230)  
JuliaAOlson@gmail.com  
Wild Earth Advocates  
1216 Lincoln Street  
Eugene, OR 97401  
Tel: (415) 786-4825

ANDREA K. RODGERS (OR Bar 041029)  
Andrearodgers42@gmail.com  
Law Offices of Andrea K. Rodgers  
3026 NW Esplanade  
Seattle, WA 98117  
Tel: (206) 696-2851

PHILIP L. GREGORY (*pro hac vice*)  
pgregory@gregorylawgroup.com  
Gregory Law Group  
1250 Godetia Drive  
Redwood City, CA 94062  
Tel: (650) 278-2957

*Attorneys for Plaintiffs*

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.,

Defendants.

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

**DECLARATION OF PHILIP L.**  
**GREGORY IN SUPPORT OF**  
**PLAINTIFFS' MOTION TO COMPEL**  
**RESPONSES TO INTERROGATORIES**

**DECLARATION OF PHILIP L. GREGORY**  
**ISO PLAINTIFFS' MOTION TO COMPEL**

I, Philip L. Gregory, hereby declare and if called upon would testify as follows:

1. I am an attorney admitted *pro hac vice* before the United States District Court for the District of Oregon and an attorney of record for Plaintiffs herein. I have personal knowledge of the facts stated herein, except as to those stated on information and belief, and if called to testify, I would and could testify competently thereto.
2. All of the documents attached as exhibits are true and correct copies of the documents they purport to be.
3. On May 4, 2018, Plaintiffs propounded notices of depositions pursuant to Fed. R. Civ. P. 30(b)(6) and RFAs on some Defendants.
4. On May 9, 2018, counsel for Defendants objected to producing agency witnesses pursuant to Fed. R. Civ. P. 30(b)(6) and responding to the RFAs. Defendants filed a Second Motion for Protective Order. (Doc. 196.)
5. In order to resolve Defendants' objections, the parties met and conferred. Further, counsel discussed this issue during the course of Status Conferences before Magistrate Judge Coffin.
6. As a result of the meet and confer efforts, the parties, along with Magistrate Judge Coffin, through meet and confer efforts, agreed to hold the depositions pursuant to Fed. R. Civ. P. 30(b)(6) and the RFAs in abeyance while Plaintiffs propounded and Defendants responded to contention interrogatories. Plaintiffs also agreed to seek judicial notice of documents.
7. On August 16, 2018, Plaintiffs and Defendants submitted a Joint Status Report which set forth their agreement to finalize the process of depositions pursuant to Fed. R. Civ. P. 30(b)(6) and the RFAs in abeyance while Plaintiffs propounded and Defendants

responded to contention interrogatories. As part of this discussion, Plaintiffs agreed any responses of Defendants to outstanding discovery requests (the pending depositions pursuant to Fed. R. Civ. P. 30(b)(6) and the RFAs that were the subject of the Second Motion for Protective Order, as well as the subsequent sets of depositions pursuant to Fed. R. Civ. P. 30(b)(6) and the RFAs that were served after Defendants filed their Second Motion for Protective Order) would be held in abeyance during the same time period. (Doc. No. 336). The relevant August 16, 2018 status conference transcript testimony is:

MR. GREGORY: If I may, Your Honor, it's their contention -- and we were trying to avoid the Rule 30(b)(6) [24] deposition issue, which they asked us to not do 30(b)(6) depositions but, rather, do interrogatories. So the issue is, okay, we are not going to do the 30(b)(6) depositions. That's fine. But we want to get to your fact witnesses and your documents, and we also want to know the basis for some of their responses to our complaint. And that's why the number because it has to be, according to them, for each agency defendant . . .

MS. PIROPATO: That plaintiffs serve us with a set of the interrogatories on the United States. We review them and let them know if they need to be broken out and propounded on an agency-by-agency basis.

MS. OLSON: And then, Your Honor, it's still plaintiffs' intention to withdraw the 30(b)(6) deposition notices and the requests for admissions, but we are waiting to serve the contention interrogatories, and we are waiting for Judge Aiken's decision on the motion in limine requesting judicial notice of government documents before we withdraw the request for admissions.

THE COURT: Okay.

Reporter's Transcript of Proceeding, Case Management Conference Before Judge Coffin, pgs. 23-29 (Aug. 16, 2018).

8. On August 17, 2018, Plaintiffs served Plaintiffs' First Set of Interrogatories on Defendants. A true and correct copy of Plaintiffs' First Set of Interrogatories is attached as **Exhibit 1** to my Declaration.

9. Per Federal Rule of Civil Procedure 33(b)(2), Defendants' responses to these interrogatories were due within 30 days, by Monday, September 17, 2018. On Thursday, September 13, 2018, counsel for Defendants requested an extension to respond to the interrogatories. Plaintiffs granted the extension as long as Defendants provided substantive responses. A true and correct copy of that email correspondence is attached as **Exhibit 2** to my Declaration.
10. On September 28, 2018, Defendants served Defendants' Partial Responses to Plaintiffs' First Set of Interrogatories. A true and correct copy of Defendants' Partial Responses to Plaintiffs' First Set of Interrogatories is attached as **Exhibit 3** to my Declaration.
11. On October 7, 2018, Defendants served Defendants' Amended Responses to Plaintiffs' First Set of Interrogatories. A true and correct copy of Defendants' Amended Responses to Plaintiffs' First Set of Interrogatories is attached as **Exhibit 4** to my Declaration.
12. On October 12, 2018, after a series of discussions by email, counsel for Plaintiffs and Defendants held a Meet & Confer via conference call. A letter sent on October 14, 2018 by counsel for Plaintiffs to counsel for Defendants memorializing this call is attached as **Exhibit 5** to my Declaration. During the call, counsel for Plaintiffs reiterated that Defendants' responses to the interrogatories failed to set forth answers as to any facts, witnesses, or documents. Counsel for Plaintiffs stated that such responses also failed to comply with the Federal Rules as, on the eve of trial, the purpose of contention interrogatories is to know what the party will present during trial so that the other party knows, before the Pre-Trial Conference, what evidence addresses what claim or defense. Counsel for Defendants refused to amend or supplement their responses except as indicated below.

- a. Counsel for Defendants wanted to walk through each interrogatory to confer on whether they could answer them as an iterative process such that Plaintiffs would redraft each of the interrogatories. Given the short time frame before commencement of trial, Plaintiffs saw no value in a further iterative process.
  - b. Counsel for Defendants indicated that, as to Interrogatory No. 8, Defendants do not intend to introduce any documents. Counsel for Plaintiffs requested a supplemental response on this interrogatory.
  - c. As to interrogatories requesting the identities of witnesses and documents, counsel for Defendants stated they would be serving the exhibit list and the witness list and wanted Plaintiffs to accept those lists in lieu of a supplemental response. Counsel for Plaintiffs replied that a witness or exhibit list was unacceptable as a supplemental response and Defendants needed to supplement their responses with the identities of witnesses and documents. Defendants did not take a position on whether they would so supplement.
13. On October 12, 2018, Defendants also notified Plaintiffs they would be providing approximately 1,600 documents or 80,000 pages worth of possible trial exhibits. Defendants did not disclose these exhibits in either Defendants' Partial Response or Defendants' Amended Responses nor have they provided the documents in their entirety by electronic or linked versions to Plaintiffs. *See* Exhibits 3 and 4.

I declare under penalty of perjury that the foregoing is true and correct. Executed this day, October 17, 2018 in Montpelier, Vermont.

/s/ Philip L. Gregory  
PHILIP L. GREGORY (*pro hac vice*)  
pgregory@gregorylawgroup.com  
Gregory Law Group

1250 Godetia Drive  
Redwood City, CA 94062  
Tel: (650) 278-2957

JULIA A. OLSON (OR Bar 062230)  
JuliaAOlson@gmail.com  
Wild Earth Advocates  
1216 Lincoln St.  
Eugene, OR 97401  
Tel: (415) 786-4825

ANDREA K. RODGERS (OR Bar 041029)  
andrearodgers42@gmail.com  
Law Offices of Andrea K. Rodgers  
3026 NW Esplanade  
Seattle, WA 98117  
Tel: (206) 696-2851

*Attorneys for Plaintiffs*

# **Exhibit 1**

JULIA A. OLSON (OR Bar 062230)  
JuliaAOlson@gmail.com  
Wild Earth Advocates  
1216 Lincoln Street  
Eugene, OR 97401  
Tel: (415) 786-4825

ANDREA K. RODGERS (OR Bar 041029)  
Andrearodgers42@gmail.com  
Law Offices of Andrea K. Rodgers  
3026 NW Esplanade  
Seattle, WA 98117  
Tel: (206) 696-2851

PHILIP L. GREGORY (*pro hac vice*)  
pgregory@gregorylawgroup.com  
Gregory Law Group  
1250 Godetia Drive  
Redwood City, CA 94062  
Tel: (650) 278-2957

*Attorneys for Plaintiffs*

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.,

Defendants.

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

**PLAINTIFFS' FIRST SET OF  
INTERROGATORIES TO DEFENDANT  
UNITED STATES OF AMERICA**

**PLAINTIFFS' FIRST SET OF INTERROGATORIES TO DEFENDANT UNITED  
STATES OF AMERICA**



**PLAINTIFFS' FIRST SET OF INTERROGATORIES TO DEFENDANT UNITED STATES OF AMERICA**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Plaintiffs request that Defendant United States of America ("DEFENDANTS") answer the following interrogatories under oath and within the time provided by the Federal Rules of Civil Procedure.

**DEFINITIONS AND INSTRUCTIONS**

- A. "Plaintiffs" means the named Plaintiffs.
- B. "DEFENDANTS" means the named Defendant United States of America.
- C. "Document" is used in the broadest sense consistent with the definition set forth in Fed. R. Civ. P. 34(a). The term "document" includes, without limitation, physical objects and things, as well as hard copies and electronic copies of computer production software, computer files, and electronic mail (email). A draft, translation, or non-identical copy is a separate document within the meaning of this term.
- D. As used herein, "DANGEROUS ANTHROPOGENIC INTERFERENCE WITH THE CLIMATE SYSTEM" refers to the United Nations Framework Convention on Climate Change treaty obligation of nation-states to avoid dangerous climate change, a treaty signed and ratified by the UNITED STATES and shall include "large global warming," "anthropogenic threats to the stability of the climate," "large-scale climate change," "dangerous human-made interference with climate," "the worst impacts of climate change," and "unacceptable concentration of greenhouse gases."
- E. As used herein, the term "CLIMATE CHANGE TARGETS" shall mean specific numerical targets that refer to the ATMOSPHERIC CO<sub>2</sub> CONCENTRATION, usually expressed in parts per million, or "ppm" (e.g., 350 ppm), or a specific numerical target of GLOBAL WARMING, or global average temperature increases usually expressed in

degrees Celsius or degrees Fahrenheit above PREINDUSTRIAL GLOBAL AVERAGE TEMPERATURE (e.g., 1°C).

- F. As used herein, “ATMOSPHERIC CO<sub>2</sub> CONCENTRATIONS TARGETS” refers to numeric targets of global annual mean atmospheric carbon dioxide levels measured in parts per million (“ppm”).
- G. As used herein, “GREENHOUSE GAS EMISSION REDUCTION TARGETS” refers to the annual reduction of greenhouse gas emissions or carbon dioxide emissions from a baseline year, or the total reduction of greenhouse gas emissions or carbon dioxide emissions from a baseline year to be met by a target year in the future.
- H. As used herein, the term “CLIMATE CHANGE” shall mean any change in the state of the climate lasting for an extended period of time. In other words, the term “CLIMATE CHANGE” includes changes in surface and ocean temperature, precipitation, or wind patterns, among other effects, that occur over several decades or longer, attributed directly or indirectly to human activity. The term “CLIMATE CHANGE” shall include ocean acidification, sea level rise, and other impacts resulting from the increased concentration of greenhouse gases in the atmosphere and oceans. “CLIMATE CHANGE” also has been called inadvertent weather modification, the greenhouse effect, CO<sub>2</sub> problem, carbon dioxide problem, climate changes, GLOBAL WARMING, global change, global heating, atmospheric pollution by carbon dioxide or other greenhouse gases, and dilution of carbon 14 by fossil carbon.
- I. As used herein, the term “GLOBAL WARMING” shall mean the rise in global average temperatures near Earth’s surface. GLOBAL WARMING causes CLIMATE CHANGE but GLOBAL WARMING is only one aspect of CLIMATE CHANGE.

- J. If, in responding to these interrogatories, DEFENDANTS elect to avail themselves of the procedure authorized by Fed. R. Civ. P. 33(d), Plaintiffs request that, for each interrogatory so answered, DEFENDANTS specify the particular document or documents by Bates number from which the answer may be derived or ascertained.
- K. If DEFENDANTS do not answer any interrogatory in full, please state the precise reason for failing to do so. If a legal objection is made, please set forth the specific nature of the grounds for that objection.
- L. If only a portion of any interrogatory will not be answered, please provide a complete answer to the remaining portion of the interrogatory and state the reasons or grounds for DEFENDANTS' inability or refusal to complete the answer. If an interrogatory can be answered only in part on the basis of information available at the time of the response, please provide an answer on the basis of that information, indicate that DEFENDANTS' answer is so limited and provide a further response when further information becomes available.
- M. If DEFENDANTS learn at any time that any response to any of these interrogatories is incomplete or incorrect, Plaintiffs request that DEFENDANTS immediately serve amended responses that are complete and correct pursuant to Rule 26(e) of the Federal Rules of Civil Procedure.
- N. If DEFENDANTS finds the meaning of any term in these interrogatories unclear, DEFENDANTS shall assume a reasonable meaning, state what the assumed meaning is and respond the interrogatory according to the assumed meaning.

INTERROGATORIES

**Interrogatory No. 1.** Describe the factual bases that support DEFENDANTS' contention that Plaintiffs' claims are barred by a lack of standing as set forth in DEFENDANTS' Affirmative Defense No. 2.

**Interrogatory No. 2.** Identify all documents that DEFENDANTS intend to introduce at trial to support DEFENDANTS' contention that Plaintiffs' claims are barred by a lack of standing as set forth in DEFENDANTS' Affirmative Defense No. 2.

**Interrogatory No. 3.** Identify all witnesses by name, address, and phone number who DEFENDANTS intend to have testify at trial in support of DEFENDANTS' contention that Plaintiffs' claims are barred by a lack of standing as set forth in DEFENDANTS' Affirmative Defense No. 2.

**Interrogatory No. 4.** Describe the factual bases that support DEFENDANTS' contention that Plaintiffs' requested relief contains an improper collateral attack on agency actions by the Department of Interior (DOI), Department of Energy (DOE), and Federal Energy Regulatory Commission (FERC), which is prohibited by the Administrative Procedure Act as set forth in DEFENDANTS' Affirmative Defense No. 4.

**Interrogatory No. 5.** Identify all documents that DEFENDANTS intend to introduce at trial to support DEFENDANTS' contention that Plaintiffs' requested relief contains an improper

collateral attack on agency actions by the DOI, DOE, and FERC, which is prohibited by the Administrative Procedure Act as set forth in DEFENDANTS' Affirmative Defense No. 4.

**Interrogatory No. 6.** Identify all witnesses by name, address, and phone number who DEFENDANTS intend to have testify at trial in support of DEFENDANTS' contention that Plaintiffs' requested relief contains an improper collateral attack on agency actions by the DOI, DOE, and FERC, which is prohibited by the Administrative Procedure Act as set forth in DEFENDANTS' Affirmative Defense No. 4.

**Interrogatory No. 7.** Describe the factual bases that support DEFENDANTS' contention that Plaintiffs failed to exhaust their administrative remedies as set forth in DEFENDANTS' Affirmative Defense No. 5.

**Interrogatory No. 8.** Identify all documents that DEFENDANTS intend to introduce at trial to support DEFENDANTS' contention that Plaintiffs failed to exhaust their administrative remedies as set forth in DEFENDANTS' Affirmative Defense No. 5.

**Interrogatory No. 9.** Identify all witnesses by name, address, and phone number who DEFENDANTS intend to have testify at trial in support DEFENDANTS' contention that Plaintiffs failed to exhaust their administrative remedies as set forth in DEFENDANTS' Affirmative Defense No. 5.

**Interrogatory No. 10.** Describe the factual bases that support DEFENDANTS' contention that Plaintiffs' claims are displaced by the Clean Air Act as set forth in DEFENDANTS' Affirmative Defense No. 6.

**Interrogatory No. 11.** Identify all documents that DEFENDANTS intend to introduce at trial to support DEFENDANTS' contention that Plaintiffs' claims are displaced by the Clean Air Act as set forth in DEFENDANTS' Affirmative Defense No. 6.

**Interrogatory No. 12.** Identify all witnesses by name, address, and phone number who DEFENDANTS intend to have testify at trial in support of DEFENDANTS' contention that Plaintiffs' claims are displaced by the Clean Air Act as set forth in DEFENDANTS' Affirmative Defense No. 6.

**Interrogatory No. 13.** Describe the factual bases that support DEFENDANTS' contention that Plaintiffs' requested relief seeks effective repeal of numerous duly enacted federal statutes as set forth in DEFENDANTS' Affirmative Defense No. 7.

**Interrogatory No. 14.** Identify the "duly enacted federal statutes" that DEFENDANTS contend Plaintiffs' requested relief seeks to effectively repeal as set forth in DEFENDANTS' Affirmative Defense No. 7.

**Interrogatory No. 15.** Identify all documents that DEFENDANTS intend to introduce at trial to support DEFENDANTS' contention that Plaintiffs' requested relief seeks effective repeal of

numerous duly enacted federal statutes as set forth in DEFENDANTS' Affirmative Defense No. 7.

**Interrogatory No. 16.** Identify all witnesses by name, address, and phone number who DEFENDANTS intend to have testify at trial in support of DEFENDANTS' contention that Plaintiffs' requested relief seeks effective repeal of numerous duly enacted federal statutes as set forth in DEFENDANTS' Affirmative Defense No. 7.

**Interrogatory No. 17.** Describe the factual bases that support DEFENDANTS' contention that Plaintiffs' requested relief seeks effective vacatur of numerous duly issued federal regulations in violation of the separation of powers principles implicit in the Constitution as set forth in DEFENDANTS' Affirmative Defense No. 8.

**Interrogatory No. 18.** Identify the "numerous duly issued federal regulations" that DEFENDANTS contend Plaintiffs' requested relief seeks to vacate as set forth in DEFENDANTS' Affirmative Defense No. 8.

**Interrogatory No. 19.** Identify all documents that DEFENDANTS intend to introduce at trial to support DEFENDANTS' contention that Plaintiffs' requested relief seeks effective vacatur of numerous duly issued federal regulations in violation of the separation of powers principles implicit in the Constitution as set forth in DEFENDANTS' Affirmative Defense No. 8.

**Interrogatory No. 20.** Identify all witnesses by name, address, and phone number who DEFENDANTS intend to have testify at trial in support DEFENDANTS' contention that Plaintiffs' requested relief seeks effective vacatur of numerous duly issued federal regulations in violation of the separation of powers principles implicit in the Constitution as set forth in DEFENDANTS' Affirmative Defense No. 8.

**Interrogatory No. 21.** Describe the factual bases which support DEFENDANTS' contention that Plaintiffs' requested relief is barred by Article I of the Constitution, which vests legislative powers in the Congress as set forth in DEFENDANTS' Affirmative Defense No. 9.

**Interrogatory No. 22.** Identify all documents that DEFENDANTS intend to introduce at trial to support DEFENDANTS' contention that Plaintiffs' requested relief is barred by Article I of the Constitution, which vests legislative powers in the Congress as set forth in DEFENDANTS' Affirmative Defense No. 9.

**Interrogatory No. 23.** Identify all witnesses by name, address, and phone number who DEFENDANTS intend to have testify at trial in support DEFENDANTS' contention that Plaintiffs' requested relief is barred by Article I of the Constitution, which vests legislative powers in the Congress as set forth in DEFENDANTS' Affirmative Defense No. 9.

**Interrogatory No. 24.** Describe the factual bases that support DEFENDANTS' contention that Plaintiffs' requested relief is barred by Article II, which vests executive powers in the President as set forth in DEFENDANTS' Affirmative Defense No. 10.



**Interrogatory No. 25.** Identify all documents that DEFENDANTS intend to introduce at trial to support DEFENDANTS' contention that Plaintiffs' requested relief is barred by Article II, which vests executive powers in the President as set forth in DEFENDANTS' Affirmative Defense No. 10.

**Interrogatory No. 26.** Identify all witnesses by name, address, and phone number who DEFENDANTS intend to have testify at trial in support DEFENDANTS' contention that Plaintiffs' requested relief is barred by Article II, which vests executive powers in the President as set forth in DEFENDANTS' Affirmative Defense No. 10.

**Interrogatory No. 27.** Describe the factual bases that support DEFENDANTS' contention that Plaintiffs' requested relief is barred by international agreements entered into by the United States as set forth in DEFENDANTS' Affirmative Defense No. 11.

**Interrogatory No. 28.** Identify the "international agreements entered into by the United States" DEFENDANTS contend bar Plaintiffs' requested relief as set forth in DEFENDANTS' Affirmative Defense No. 11.

**Interrogatory No. 29.** Identify all documents that DEFENDANTS intend to introduce at trial to support DEFENDANTS' contention that Plaintiffs' requested relief is barred by international agreements entered into by the United States as set forth in DEFENDANTS' Affirmative Defense No. 11.

**Interrogatory No. 30.** Identify all witnesses by name, address, and phone number who DEFENDANTS intend to have testify at trial in support DEFENDANTS' contention that Plaintiffs' requested relief is barred by international agreements entered into by the United States as set forth in DEFENDANTS' Affirmative Defense No. 11.

**Interrogatory No. 31.** Describe the factual bases that support DEFENDANTS' contention that Plaintiffs' requested relief is barred by of separation of powers principles implicit in the Constitution as set forth in DEFENDANTS' Affirmative Defense No. 12.

**Interrogatory No. 32.** Identify all documents that DEFENDANTS intend to introduce at trial to support DEFENDANTS' contention that Plaintiffs' requested relief is barred by of separation of powers principles implicit in the Constitution as set forth in DEFENDANTS' Affirmative Defense No. 12.

**Interrogatory No. 33.** Identify all witnesses by name, address, and phone number who DEFENDANTS intend to have testify at trial in support DEFENDANTS' contention that Plaintiffs' requested relief is barred by of separation of powers principles implicit in the Constitution as set forth in DEFENDANTS' Affirmative Defense No. 12.

**Interrogatory No. 34.** Describe the factual bases that support DEFENDANTS' denial that DEFENDANTS have "continued a policy or practice of allowing the exploitation of fossil fuels," as set forth in paragraph 1 of DEFENDANTS' Answer.

**Interrogatory No. 35.** Identify all documents that DEFENDANTS intend to introduce at trial to support DEFENDANTS' denial that DEFENDANTS have "continued a policy or practice of allowing the exploitation of fossil fuels," as set forth in paragraph 1 of DEFENDANTS' Answer.

**Interrogatory No. 36.** Identify all witnesses by name, address, and phone number who DEFENDANTS intend to have testify at trial in support DEFENDANTS' denial that DEFENDANTS have "continued a policy or practice of allowing the exploitation of fossil fuels," as set forth in paragraph 1 of DEFENDANTS' Answer.

**Interrogatory No. 37.** Describe the factual bases that support DEFENDANTS' averment that there is no scientific consensus that 350 parts per million (ppm) is the maximum safe level of atmospheric CO<sub>2</sub> concentration that is necessary to restore a stable climate system as set forth in paragraph 4 of DEFENDANTS' Answer.

**Interrogatory No. 38.** Identify all documents that DEFENDANTS intend to introduce at trial to support DEFENDANTS' averment that there is no scientific consensus that 350 ppm is the maximum safe level of atmospheric CO<sub>2</sub> concentration that is necessary to restore a stable climate system as set forth in paragraph 4 of DEFENDANTS' Answer.

**Interrogatory No. 39.** Identify all witnesses by name, address, and phone number who DEFENDANTS intend to have testify at trial in support DEFENDANTS' averment that there is no scientific consensus that 350 ppm is the maximum safe level of atmospheric CO<sub>2</sub>

concentration that is necessary to restore a stable climate system as set forth in paragraph 4 of DEFENDANTS' Answer.

**Interrogatory No. 40.** Describe the factual bases that support DEFENDANTS' averment that the State Department is not charged with regulating petroleum products that enter or leave the country as set forth in paragraph 123 of DEFENDANTS' Answer.

**Interrogatory No. 41.** Identify all documents that DEFENDANTS intend to introduce at trial to support DEFENDANTS' averment that the State Department is not charged with regulating petroleum products that enter or leave the country as set forth in paragraph 123 of DEFENDANTS' Answer.

**Interrogatory No. 42.** Identify all witnesses by name, address, and phone number who DEFENDANTS intend to have testify at trial in support DEFENDANTS' averment that the State Department is not charged with regulating petroleum products that enter or leave the country as set forth in paragraph 123 of DEFENDANTS' Answer.

**Interrogatory No. 43.** Defendants' Answer to Paragraph 123 states, in part, as follows: "This additional language underscores that climate change is a global challenge that the United States addresses together with international partners and stakeholders." Describe the factual bases of how the United States is addressing the "global challenge" of climate change "with international partners and stakeholders."

**Interrogatory No. 44.** In paragraph 127 of DEFENDANTS’ Answer, “Federal Defendants aver that the Clean Power Plan is not intended to ‘preserve a habitable climate system.’” Describe the factual bases of each plan or policy of the Federal Defendants that are currently intended to preserve a habitable climate system.

**Interrogatory No. 45.** In paragraph 131 of DEFENDANTS’ Answer, DEFENDANTS “aver that the important details of the carbon cycle and other aspects of climate change were not widely understood until many decades later” than 1899. Describe the factual bases of each important detail of the carbon cycle and other aspects of climate change that were not widely understood “until many decades later.”

**Interrogatory No. 46.** In paragraph 208 of DEFENDANTS’ Answer, “Defendants admit that stabilizing atmospheric CO<sub>2</sub> concentrations will require deep reductions in CO<sub>2</sub> emissions.” Describe the factual bases of each current policy that is currently being implemented and enforced by each Defendant that are attempting to “stabiliz[e] atmospheric CO<sub>2</sub> concentrations” through requiring “deep reductions in CO<sub>2</sub> emissions.”

**Interrogatory No. 47.** In paragraph 214 of DEFENDANTS’ Answer, DEFENDANTS acknowledge “sea level rise will lead to increases in flooding and other damages in coastal and island communities.” Describe the factual bases of each current policy that is currently being implemented and enforced by each Defendant that is attempting to prevent “sea level rise [that] will lead to increases in flooding and other damages in coastal and island communities.”

**Interrogatory No. 48.** In paragraph 228 of DEFENDANTS' Answer, "Defendants admit that climate change is predicted to decrease crop yield, increase crop prices, and decrease the concentrations of protein and essential minerals in crops such as wheat and rice, which lowers these crops' nutritional value." Describe the factual bases of each current policy that is currently being implemented and enforced by each Defendant that is attempting to prevent "decrease crop yield, increase crop prices, and decrease the concentrations of protein and essential minerals in crops such as wheat and rice, which lowers these crops' nutritional value" as a result of climate change.

**Interrogatory No. 49.** In paragraph 261 of DEFENDANTS' Answer, "Federal Defendants deny the allegation that current actions by Federal Defendants are not based on any scientific standard." Describe the "scientific standard" that "current actions by Federal Defendants" are based on.

**Interrogatory No. 50.** Identify all documents that DEFENDANTS intend to introduce at trial to support DEFENDANTS' denial that "actions by Federal Defendants are not based on any scientific standard," as set forth in paragraph 261 of DEFENDANTS' Answer.

**Interrogatory No. 51.** Identify all witnesses by name, address, and phone number who DEFENDANTS intend to have testify at trial in support DEFENDANTS' denial that "actions by Federal Defendants are not based on any scientific standard," as set forth in paragraph 261 of DEFENDANTS' Answer.

**Interrogatory No. 52.** Did DEFENDANTS conduct any analysis or evaluation of ATMOSPHERIC CO<sub>2</sub> CONCENTRATIONS, CLIMATE CHANGE TARGETS, or GREENHOUSE GAS EMISSION REDUCTION TARGETS that would avoid endangerment of human health and welfare for current and future generations and/or DANGEROUS ANTHROPOGENIC INTERFERENCE WITH THE CLIMATE SYSTEM.

**Interrogatory No. 53.** If DEFENDANTS conducted any analysis or evaluation of ATMOSPHERIC CO<sub>2</sub> CONCENTRATIONS, CLIMATE CHANGE TARGETS, or GREENHOUSE GAS EMISSION REDUCTION TARGETS that would avoid endangerment of human health and welfare for current and future generations and/or DANGEROUS ANTHROPOGENIC INTERFERENCE WITH THE CLIMATE SYSTEM, identify all documents that contain such analysis or evaluation.

**Interrogatory No. 54.** If DEFENDANTS conducted any analysis or evaluation of ATMOSPHERIC CO<sub>2</sub> CONCENTRATIONS, CLIMATE CHANGE TARGETS, or GREENHOUSE GAS EMISSION REDUCTION TARGETS that would avoid endangerment of human health and welfare for current and future generations and/or DANGEROUS ANTHROPOGENIC INTERFERENCE WITH THE CLIMATE SYSTEM, identify all witnesses by name, address, and phone number who performed such analysis or evaluation.

**Interrogatory No. 55.** Identify whether DEFENDANTS funded any analysis or evaluation of ATMOSPHERIC CO<sub>2</sub> CONCENTRATIONS, CLIMATE CHANGE TARGETS, or

GREENHOUSE GAS EMISSION REDUCTION TARGETS that would avoid endangerment of human health and welfare for current and future generations and/or DANGEROUS ANTHROPOGENIC INTERFERENCE WITH THE CLIMATE SYSTEM.

**Interrogatory No. 56.** If DEFENDANTS funded any analysis or evaluation of ATMOSPHERIC CO<sub>2</sub> CONCENTRATIONS, CLIMATE CHANGE TARGETS, or GREENHOUSE GAS EMISSION REDUCTION TARGETS that would avoid endangerment of human health and welfare for current and future generations and/or DANGEROUS ANTHROPOGENIC INTERFERENCE WITH THE CLIMATE SYSTEM, identify all documents that contain such analysis or evaluation.

**Interrogatory No. 57.** If DEFENDANTS funded any analysis or evaluation of ATMOSPHERIC CO<sub>2</sub> CONCENTRATIONS, CLIMATE CHANGE TARGETS, or GREENHOUSE GAS EMISSION REDUCTION TARGETS that would avoid endangerment of human health and welfare for current and future generations and/or DANGEROUS ANTHROPOGENIC INTERFERENCE WITH THE CLIMATE SYSTEM, identify all witnesses by name, address, and phone number who performed such analysis or evaluation.

**Interrogatory No. 58.** If DEFENDANTS will be having one or more witnesses testify at trial regarding Plaintiffs' Claims for Relief, identify all witnesses by name, address, and phone number who will be testifying as a non-expert witness.



**Interrogatory No. 59.** If DEFENDANTS will be having one or more witnesses testify at trial regarding Plaintiffs' Claims for Relief, identify the general subject matter on which such witness is expected to testify.

**Interrogatory No. 60.** If DEFENDANTS will be having one or more witnesses testify at trial regarding Plaintiffs' Claims for Relief, identify all documents that may be offered in connection with the testimony of such witness.

DATED this 17th day of August, 2018.

/s/ Philip L. Gregory  
PHILIP L. GREGORY (*pro hac vice*)  
*Attorneys for Plaintiffs*

## **Exhibit 2**

**From:** Norman, Erika (ENRD) <[Erika.Norman@usdoj.gov](mailto:Erika.Norman@usdoj.gov)>  
**Sent:** Thursday, September 13, 2018 2:46 PM  
**To:** Philip Gregory <[pgregory@gregorylawgroup.com](mailto:pgregory@gregorylawgroup.com)>; Julia Olson <[juliaaolson@gmail.com](mailto:juliaaolson@gmail.com)>; Andrea Rodgers <[andrearodgers42@gmail.com](mailto:andrearodgers42@gmail.com)>  
**Cc:** Piropato, Marissa (ENRD) <[Marissa.Piropato@usdoj.gov](mailto:Marissa.Piropato@usdoj.gov)>; Singer, Frank (ENRD) <[Frank.Singer@usdoj.gov](mailto:Frank.Singer@usdoj.gov)>; Boronow, Clare (ENRD) <[Clare.Boronow@usdoj.gov](mailto:Clare.Boronow@usdoj.gov)>; Duffy, Sean C. (ENRD) <[Sean.C.Duffy@usdoj.gov](mailto:Sean.C.Duffy@usdoj.gov)>  
**Subject:** RE: 2018.08.17.JULIANA Contention Interrogatories.pdf

Counsel –

Defendants are going to need a three week extension to respond to Plaintiffs' First Set of Interrogatories, the 60 interrogatories that you propounded on the evening of August 17, 2018. As we discussed, absent a stipulation or order, the rules allow for 25 interrogatories. In your transmittal email, you indicated that you would be sending a similar set of interrogatories to each of the agency Defendants during the week of August 20 – 24. We have not received any additional interrogatories and have begun the process of seeking agency input into our responses to these interrogatories where appropriate.

We are available to confer today or tomorrow around deposition schedules as to a possible stipulation regarding the number of interrogatories served, Plaintiffs' intentions with regard to additional interrogatories, and our need for an extension, which is related to these topics. Please let us know your availability.

Thank you,

Erika

**From:** Philip Gregory  
**Sent:** Friday, September 14, 2018 8:56 AM  
**To:** 'Norman, Erika (ENRD)' <[Erika.Norman@usdoj.gov](mailto:Erika.Norman@usdoj.gov)>; Julia Olson <[juliaaolson@gmail.com](mailto:juliaaolson@gmail.com)>; Andrea Rodgers <[andrearodgers42@gmail.com](mailto:andrearodgers42@gmail.com)>  
**Cc:** Piropato, Marissa (ENRD) <[Marissa.Piropato@usdoj.gov](mailto:Marissa.Piropato@usdoj.gov)>; Singer, Frank (ENRD) <[Frank.Singer@usdoj.gov](mailto:Frank.Singer@usdoj.gov)>; Boronow, Clare (ENRD) <[Clare.Boronow@usdoj.gov](mailto:Clare.Boronow@usdoj.gov)>; Duffy, Sean C. (ENRD) <[Sean.C.Duffy@usdoj.gov](mailto:Sean.C.Duffy@usdoj.gov)>  
**Subject:** RE: 2018.08.17.JULIANA Contention Interrogatories.pdf

Erika,

We are happy to give Defendants a three week extension as long as Plaintiffs receive substantive responses to all 60 interrogatories.

As we had discussed previously in meet and confers and in court, the contention interrogatories were to apply to each Defendant. Ever since we served the Rule 30(b)(6) deposition notices on Defendants, we discussed eliminating the need for the subject areas and instead using contention interrogatories. We made it very clear that, in order for us to do what you suggested (no Rule 30(b)(6) depositions), we needed agreement on increasing the number of interrogatories. If you will not stipulate to the 60 interrogatories, please let us know ASAP so we can take this matter up with Judge Coffin on Monday.

The last we heard from you was that Defendants wanted to see the actual contention interrogatories before determining whether we needed the interrogatories addressed to each Defendant or whether you would be responding on behalf of all Defendants in one set. We are still waiting to hear back from you on that point. If you need separate sets of interrogatories for each Defendant, again please let us know ASAP so we can get those separate sets served. If each Defendant is going to respond substantively to all 60 contention interrogatories in three weeks, the extension is granted to October 5.

If not, please inform us in writing what Defendants are requesting, as we will need to reevaluate.

Best,

Phil

## **Exhibit 3**

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 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  
(202) 305-0445 (Duffy)  
sean.c.duffy@usdoj.gov

*Attorneys for Defendants*

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

KELSEY CASCADIA ROSE JULIANA,  
*et al.*,

Plaintiffs,

v.

The United States of America, *et al.*,

Defendants.

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

**DEFENDANTS' PARTIAL RESPONSES  
TO PLAINTIFFS' FIRST SET OF  
INTERROGATORIES TO DEFENDANT  
UNITED STATES OF AMERICA**

PARTIAL RESPONSES TO PLS.'  
FIRST SET OF INTERROGATORIES

**DEFENDANTS' PARTIAL RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and by agreement of the Parties, the United States hereby submits these partial responses to Plaintiffs' first set of interrogatories. While Defendants' response to the first set of interrogatories is due October 7, 2018, Defendants agreed to provide by September 28 their objections to those interrogatories for which Defendants know at this time that they will provide only objections, thus affording the Parties additional time to meet and confer as necessary in advance of trial. By submitting these partial responses now Defendants have not waived their right under Rule 33 to submit objections, including complete objections without further responses, to any of Plaintiffs' remaining interrogatories.

**GENERAL OBJECTIONS**

The United States hereby objects generally to Plaintiffs' interrogatories and incorporates these general objections in each and every response herein.

1. The United States objects to each and every interrogatory on the grounds that this case is improper for several jurisdictional and substantive reasons, including but not limited to Plaintiffs' lack of standing to bring this lawsuit. The United States acknowledges that the Court has either disagreed with or not yet ruled on Defendants' dispositive challenges, and therefore is not refusing to respond to any interrogatory based solely upon this objection.

2. The United States objects to each and every interrogatory on the grounds that separation of powers bars discovery under the circumstances presented by this case where Plaintiffs' attempts to probe the views of federal agencies concerning questions of national environmental and energy policy would usurp the role of the President in supervising and seeking the opinions of Executive Branch agencies, and where Plaintiffs' attempts to compel the

agencies to formulate policy positions through their discovery responses infringes on Congress's role to establish the means by which agencies may formulate policy, including under the procedures prescribed by the Administrative Procedure Act ("APA"). The United States acknowledges that the Court has not accepted Defendants' view that separation of powers bars discovery in this case, and therefore is not refusing to respond to any interrogatory based solely upon this objection.

3. The United States objects to each and every interrogatory on the grounds that discovery in this case is impermissible under the APA, which though not invoked by Plaintiffs provides the only right of action for challenging actions or inactions by federal agencies, including on constitutional grounds. The United States acknowledges that the Court has not accepted Defendants' view that the APA bars discovery in this case, and therefore is not refusing to respond to any interrogatory based solely upon this objection.

4. The United States objects to any and all interrogatories or parts thereof directed to issues of pure law — i.e., legal issues not dependent on the facts of the case. Such interrogatories are not permitted by Rule 33.

5. The United States objects to any and all interrogatories seeking information on trial witnesses and exhibits as premature. The United States will provide Plaintiffs with trial witness and exhibit lists on or before the deadline for the exchange of trial and exhibit lists set by the Court. Plaintiffs' request that the United States undertake those efforts twice in short succession is unduly burdensome. Further, at this time the United States does not know the identity of fact witnesses that may provide testimony at trial. The United States will supplement these responses when that information becomes available.

6. Discovery in this action is ongoing. These responses and objections are made without prejudice to, and are not a waiver of, the United States' right to supplement these responses or objections.

7. The United States objects to any and all definitions, instructions, and interrogatories, or any parts thereof that call for information or materials protected by the attorney client privilege, the attorney work product doctrine, or any other privilege, immunity, or statutory prohibition.

8. The United States objects to any and all definitions, instructions, interrogatories, or any parts thereof that purport to require the United States to provide information that is irrelevant to this lawsuit, outside the scope of discovery, or not reasonably calculated to lead to the discovery of admissible evidence.

9. The United States objects to any and all definitions, instructions, and interrogatories or any parts thereof that seek to impose burdens on the United States in excess of the United States' obligations under the Federal Rules of Civil Procedure.

10. The United States objects to any and all interrogatories or parts thereof that are overbroad, oppressive, or unduly burdensome.

11. The United States objects to any and all interrogatories or parts thereof that seek information not reasonably available to the United States.

12. The United States objects to the term DANGEROUS ANTHROPOGENIC INTERFERENCE WITH THE CLIMATE SYSTEM and to each and every interrogatory employing that term as vague, ambiguous, and reasonably susceptible to more than one meaning. The United Nations Framework Convention on Climate Change does not define "Dangerous Anthropogenic Interference with the Climate System" and Plaintiffs' definition of the term to



“include ‘large global warming,’ ‘anthropogenic threats to the stability of the climate,’ ‘large-scale climate change,’ ‘dangerous human-made interference with climate,’ ‘the worst impacts of climate change,’ and ‘unacceptable concentration of greenhouse gases’” is vague, ambiguous, overly broad, and susceptible to multiple interpretations and meanings. Specifically, the terms “dangerous,” “large,” “threats,” “stability,” “large-scale,” “interference,” “worst impacts,” “unacceptable concentration,” are overly broad and highly subjective terms to which the United States cannot reasonably formulate any response.

13. The United States objects to the Plaintiffs’ use of the term CLIMATE CHANGE and to each and every interrogatory employing that term as vague, ambiguous, and reasonably susceptible to more than one meaning. The United States is unable to locate Plaintiffs’ chosen definition of “climate change” in any scientific source. Plaintiffs appear to have cobbled together their own definition, picking and choosing pieces from various sources, including the United Nations Framework Convention on Climate Change and the Intergovernmental Panel on Climate Change, in order to best suit their legal theories. Further, the phrases “directly or indirectly to human activity” and “other impacts resulting from the increased concentration of greenhouse gases” are overly broad, ambiguous, and highly subjective. Finally, to the extent Plaintiffs’ define “climate change” by reference to a slew of other undefined, overly broad, and vague and ambiguous terms— “inadvertent weather modification,” “the greenhouse effect,” “CO<sub>2</sub> problem,” “carbon dioxide problem,” “climate changes,” “GLOBAL WARMING,” “global change,” “global heating,” “atmospheric pollution by carbon dioxide or other greenhouse gases,” and “dilution of carbon 14 by fossil carbon” – the United States is unable to reasonably formulate any response.

**PARTIAL RESPONSES TO INTERROGATORIES**

**Interrogatory No. 2.** Identify all documents that DEFENDANTS intend to introduce at trial to support DEFENDANTS' contention that Plaintiffs' claims are barred by a lack of standing as set forth in DEFENDANTS' Affirmative Defense No. 2.

**Response to Interrogatory No. 2:**

The United States objects to this interrogatory because it is directed to purely legal issues on which the United States has sought summary judgment and to which Rule 33 does not require a response. The United States further objects on the grounds that this interrogatory is premature and unduly burdensome where the Court has set an upcoming deadline for the Parties to exchange trial exhibit lists and a substantial number of potential trial witnesses have yet to be deposed.

**Interrogatory No. 3.** Identify all witnesses by name, address, and phone number who DEFENDANTS intend to have testify at trial in support of DEFENDANTS' contention that Plaintiffs' claims are barred by a lack of standing as set forth in DEFENDANTS' Affirmative Defense No. 2.

**Response to Interrogatory No. 3:**

The United States objects to this interrogatory because it is directed to purely legal issues on which the United States has sought summary judgment and to which Rule 33 does not require a response. The United States further objects on the grounds that this interrogatory is premature and unduly burdensome where the Court has set an upcoming deadline for the Parties to exchange trial witness lists and a substantial number of potential trial witnesses have yet to be deposed.

**Interrogatory No. 4.** Describe the factual bases that support DEFENDANTS' contention that Plaintiffs' requested relief contains an improper collateral attack on agency actions by the Department of Interior (DOI), Department of Energy (DOE), and Federal Energy Regulatory Commission (FERC), which is prohibited by the Administrative Procedure Act as set forth in DEFENDANTS' Affirmative Defense No. 4.

**Response to Interrogatory No. 4:**

The United States objects to this interrogatory in its entirety, because it is directed to purely legal issues to which Rule 33 does not require a response.

**Interrogatory No. 5.** Identify all documents that DEFENDANTS intend to introduce at trial to support DEFENDANTS' contention that Plaintiffs' requested relief contains an improper collateral attack on agency actions by the DOI, DOE, and FERC, which is prohibited by the Administrative Procedure Act as set forth in DEFENDANTS' Affirmative Defense No. 4.

**Response to Interrogatory No. 5:**

The United States objects to this interrogatory in its entirety, because it is directed to purely legal issues to which Rule 33 does not require a response. The United States further objects on the grounds that this interrogatory is premature and unduly burdensome where the Court has set an upcoming deadline for the Parties to exchange trial exhibit lists and a substantial number of potential trial witnesses have yet to be deposed.

**Interrogatory No. 6.** Identify all witnesses by name, address, and phone number who DEFENDANTS intend to have testify at trial in support of DEFENDANTS' contention that Plaintiffs' requested relief contains an improper collateral attack on agency actions by the DOI,

DOE and FERC, which is prohibited by the Administrative Procedure Act as set forth in DEFENDANTS' Affirmative Defense No. 4.

**Response to Interrogatory No. 6:**

The United States objects to this interrogatory in its entirety, because it is directed to purely legal issues to which Rule 33 does not require a response. The United States further objects on the grounds that this interrogatory is premature and unduly burdensome where the Court has set an upcoming deadline for the Parties to exchange trial witness lists and a substantial number of potential trial witnesses have yet to be deposed.

**Interrogatory No. 8.** Identify all documents that DEFENDANTS intend to introduce at trial to support DEFENDANTS' contention that Plaintiffs failed to exhaust their administrative remedies as set forth in DEFENDANTS' Affirmative Defense No. 5.

**Response to Interrogatory No. 8:**

The United States objects on the grounds that this interrogatory is premature and unduly burdensome where the Court has set an upcoming deadline for the Parties to exchange trial exhibit lists and a substantial number of potential trial witnesses have yet to be deposed.

**Interrogatory No. 9.** Identify all witnesses by name, address, and phone number who DEFENDANTS intend to have testify at trial in support DEFENDANTS' contention that Plaintiffs failed to exhaust their administrative remedies as set forth in DEFENDANTS' Affirmative Defense No. 5.

**Response to Interrogatory No. 9:**

The United States objects on the grounds that this interrogatory is premature and unduly burdensome where the Court has set an upcoming deadline for the Parties to exchange trial witness lists and a substantial number of potential trial witnesses have yet to be deposed.

**Interrogatory No. 10.** Describe the factual bases that support DEFENDANTS' contention that Plaintiffs' claims are displaced by the Clean Air Act as set forth in DEFENDANTS' Affirmative Defense No. 6.

**Response to Interrogatory No. 10:**

The United States objects to this interrogatory in its entirety, because it is directed to purely legal issues to which Rule 33 does not require a response.

**Interrogatory No. 11.** Identify all documents that DEFENDANTS intend to introduce at trial to support DEFENDANTS' contention that Plaintiffs' claims are displaced by the Clean Air Act as set forth in DEFENDANTS' Affirmative Defense No. 6.

**Response to Interrogatory No. 11:**

The United States objects to this interrogatory in its entirety, because it is directed to purely legal issues to which Rule 33 does not require a response. The United States further objects on the grounds that this interrogatory is premature and unduly burdensome where the Court has set an upcoming deadline for the Parties to exchange trial exhibit lists and a substantial number of potential trial witnesses have yet to be deposed.

**Interrogatory No. 12.** Identify all witnesses by name, address, and phone number who DEFENDANTS intend to have testify at trial in support of DEFENDANTS' contention that Plaintiffs' claims are displaced by the Clean Air Act as set forth in DEFENDANTS' Affirmative Defense No. 6.

**Response to Interrogatory No. 12:**

The United States objects to this interrogatory in its entirety, because it is directed to purely legal issues to which Rule 33 does not require a response. The United States further objects on the grounds that this interrogatory is premature and unduly burdensome where the

Court has set an upcoming deadline for the Parties to exchange trial witness lists and a substantial number of potential trial witnesses have yet to be deposed.

**Interrogatory No. 13.** Describe the factual bases that support DEFENDANTS' contention that Plaintiffs' requested relief seeks effective repeal of numerous duly enacted federal statutes as set forth in DEFENDANTS' Affirmative Defense No. 7.

**Response to Interrogatory No. 13:**

The United States objects to this interrogatory in its entirety, because it is directed to purely legal issues to which Rule 33 does not require a response.

**Interrogatory No. 15.** Identify all documents that DEFENDANTS intend to introduce at trial to support DEFENDANTS' contention that Plaintiffs' requested relief seeks effective repeal of numerous duly enacted federal statutes as set forth in DEFENDANTS' Affirmative Defense No. 7.

**Response to Interrogatory No. 15:**

The United States objects to this interrogatory in its entirety, because it is directed to purely legal issues to which Rule 33 does not require a response. The United States further objects on the grounds that this interrogatory is premature and unduly burdensome where the Court has set an upcoming deadline for the Parties to exchange trial exhibit lists and a substantial number of potential trial witnesses have yet to be deposed.

**Interrogatory No. 16.** Identify all witnesses by name, address, and phone number who DEFENDANTS intend to have testify at trial in support of DEFENDANTS' contention that Plaintiffs' requested relief seeks effective repeal of numerous duly enacted federal statutes as set forth in DEFENDANTS' Affirmative Defense No. 7.

**Response to Interrogatory No. 16:**

The United States objects to this interrogatory in its entirety, because it is directed to purely legal issues to which Rule 33 does not require a response. The United States further objects on the grounds that this interrogatory is premature and unduly burdensome where the Court has set an upcoming deadline for the Parties to exchange trial witness lists and a substantial number of potential trial witnesses have yet to be deposed.

**Interrogatory No. 17.** Describe the factual bases that support DEFENDANTS' contention that Plaintiffs' requested relief seeks effective vacatur of numerous duly issued federal regulations in violation of the separation of powers principles implicit in the Constitution as set forth in DEFENDANTS' Affirmative Defense No. 8.

**Response to Interrogatory No. 17:**

The United States objects to this interrogatory in its entirety, because it is directed to purely legal issues to which Rule 33 does not require a response.

**Interrogatory No. 19.** Identify all documents that DEFENDANTS intend to introduce at trial to support DEFENDANTS' contention that Plaintiffs' requested relief seeks effective vacatur of numerous duly issued federal regulations in violation of the separation of powers principles implicit in the Constitution as set forth in DEFENDANTS' Affirmative Defense No. 8.

**Response to Interrogatory No. 19:**

The United States objects to this interrogatory in its entirety, because it is directed to purely legal issues to which Rule 33 does not require a response. The United States further objects on the grounds that this interrogatory is premature and unduly burdensome where the Court has set an upcoming deadline for the Parties to exchange trial exhibit lists and a substantial number of potential trial witnesses have yet to be deposed.

**Interrogatory No. 20.** Identify all witnesses by name, address, and phone number who DEFENDANTS intend to have testify at trial in support DEFENDANTS' contention that Plaintiffs' requested relief seeks effective vacatur of numerous duly issued federal regulations in violation of the separation of powers principles implicit in the Constitution as set forth in DEFENDANTS' Affirmative Defense No. 8.

**Response to Interrogatory No. 20:**

The United States objects to this interrogatory in its entirety, because it is directed to purely legal issues to which Rule 33 does not require a response. The United States further objects on the grounds that this interrogatory is premature and unduly burdensome where the Court has set an upcoming deadline for the Parties to exchange trial witness lists and a substantial number of potential trial witnesses have yet to be deposed.

**Interrogatory No. 21.** Describe the factual bases which support DEFENDANTS' contention that Plaintiffs' requested relief is barred by Article I of the Constitution, which vests legislative powers in the Congress as set forth in DEFENDANTS' Affirmative Defense No. 9.

**Response to Interrogatory No. 21:**

The United States objects to this interrogatory in its entirety, because it is directed to purely legal issues to which Rule 33 does not require a response.

**Interrogatory No. 22.** Identify all documents that DEFENDANTS intend to introduce at trial to support DEFENDANTS' contention that Plaintiffs' requested relief is barred by Article I of the Constitution, which vests legislative powers in the Congress as set forth in DEFENDANTS' Affirmative Defense No. 9.

**Response to Interrogatory No. 22:**



The United States objects to this interrogatory in its entirety, because it is directed to purely legal issues to which Rule 33 does not require a response. The United States further objects on the grounds that this interrogatory is premature and unduly burdensome where the Court has set an upcoming deadline for the Parties to exchange trial exhibit lists and a substantial number of potential trial witnesses have yet to be deposed.

**Interrogatory No. 23.** Identify all witnesses by name, address, and phone number who DEFENDANTS intend to have testify at trial in support DEFENDANTS' contention that Plaintiffs' requested relief is barred by Article I of the Constitution, which vests legislative powers in the Congress as set forth in DEFENDANTS' Affirmative Defense No. 9.

**Response to Interrogatory No. 23:**

The United States objects to this interrogatory in its entirety, because it is directed to purely legal issues to which Rule 33 does not require a response. The United States further objects on the grounds that this interrogatory is premature and unduly burdensome where the Court has set an upcoming deadline for the Parties to exchange trial witness lists and a substantial number of potential trial witnesses have yet to be deposed.

**Response to Interrogatory No. 24:**

The United States objects to this interrogatory in its entirety, because it is directed to purely legal issues to which Rule 33 does not require a response.

**Interrogatory No. 24.** Describe the factual bases that support DEFENDANTS' contention that Plaintiffs' requested relief is barred by Article II, which vests executive powers in the President as set forth in DEFENDANTS' Affirmative Defense No. 10.

**Interrogatory No. 25.** Identify all documents that DEFENDANTS intend to introduce at trial to support DEFENDANTS' contention that Plaintiffs' requested relief is barred by Article II, which

vests executive powers in the President as set forth in DEFENDANTS' Affirmative Defense No. 10.

**Response to Interrogatory No. 25:**

The United States objects to this interrogatory in its entirety, because it is directed to purely legal issues to which Rule 33 does not require a response. The United States further objects on the grounds that this interrogatory is premature and unduly burdensome where the Court has set an upcoming deadline for the Parties to exchange trial exhibit lists and a substantial number of potential trial witnesses have yet to be deposed.

**Interrogatory No. 26.** Identify all witnesses by name, address, and phone number who DEFENDANTS intend to have testify at trial in support DEFENDANTS' contention that Plaintiffs' requested relief is barred by Article II, which vests executive powers in the President as set forth in DEFENDANTS' Affirmative Defense No. 10.

**Response to Interrogatory No. 26:**

The United States objects to this interrogatory in its entirety, because it is directed to purely legal issues to which Rule 33 does not require a response. The United States further objects on the grounds that this interrogatory is premature and unduly burdensome where the Court has set an upcoming deadline for the Parties to exchange trial witness lists and a substantial number of potential trial witnesses have yet to be deposed.

**Interrogatory No. 27.** Describe the factual bases that support DEFENDANTS' contention that Plaintiffs' requested relief is barred by international agreements entered into by the United States as set forth in DEFENDANTS' Affirmative Defense No. 11.

**Response to Interrogatory No. 27:**

The United States objects to this interrogatory in its entirety, because it is directed to purely legal issues to which Rule 33 does not require a response.

**Interrogatory No. 29.** Identify all documents that DEFENDANTS intend to introduce at trial to support DEFENDANTS' contention that Plaintiffs' requested relief is barred by international agreements entered into by the United States as set forth in DEFENDANTS' Affirmative Defense No. 11.

**Response to Interrogatory No. 29:**

The United States objects to this interrogatory in its entirety, because it is directed to purely legal issues to which Rule 33 does not require a response. The United States further objects on the grounds that this interrogatory is premature and unduly burdensome where the Court has set an upcoming deadline for the Parties to exchange trial exhibit lists and a substantial number of potential trial witnesses have yet to be deposed.

**Interrogatory No. 30.** Identify all witnesses by name, address, and phone number who DEFENDANTS intend to have testify at trial in support DEFENDANTS' contention that Plaintiffs' requested relief is barred by international agreements entered into by the United States as set forth in DEFENDANTS' Affirmative Defense No. 11.

**Response to Interrogatory No. 30:**

The United States objects to this interrogatory in its entirety, because it is directed to purely legal issues to which Rule 33 does not require a response. The United States further objects on the grounds that this interrogatory is premature and unduly burdensome where the Court has set an upcoming deadline for the Parties to exchange trial witness lists and a substantial number of potential trial witnesses have yet to be deposed.

**Interrogatory No. 31.** Describe the factual bases that support DEFENDANTS' contention that Plaintiffs' requested relief is barred by of separation of powers principles implicit in the Constitution as set forth in DEFENDANTS' Affirmative Defense No. 12.

**Response to Interrogatory No. 31:**

The United States objects to this interrogatory in its entirety, because it is directed to purely legal issues to which Rule 33 does not require a response.

**Interrogatory No. 32.** Identify all documents that DEFENDANTS intend to introduce at trial to support DEFENDANTS' contention that Plaintiffs' requested relief is barred by of separation of powers principles implicit in the Constitution as set forth in DEFENDANTS' Affirmative Defense No. 12.

**Response to Interrogatory No. 32:**

The United States objects to this interrogatory in its entirety, because it is directed to purely legal issues to which Rule 33 does not require a response. The United States further objects on the grounds that this interrogatory is premature and unduly burdensome where the Court has set an upcoming deadline for the Parties to exchange trial exhibit lists and a substantial number of potential trial witnesses have yet to be deposed.

**Interrogatory No. 33.** Identify all witnesses by name, address, and phone number who DEFENDANTS intend to have testify at trial in support DEFENDANTS' contention that Plaintiffs' requested relief is barred by of separation of powers principles implicit in the Constitution as set forth in DEFENDANTS' Affirmative Defense No. 12.

**Response to Interrogatory No. 33:**

The United States objects to this interrogatory in its entirety, because it is directed to purely legal issues to which Rule 33 does not require a response. The United States further

objects on the grounds that this interrogatory is premature and unduly burdensome where the Court has set an upcoming deadline for the Parties to exchange trial witness lists and a substantial number of potential trial witnesses have yet to be deposed.

**Interrogatory No. 35.** Identify all documents that DEFENDANTS intend to introduce at trial to support DEFENDANTS' denial that DEFENDANTS have "continued a policy or practice of allowing the exploitation of fossil fuels," as set forth in paragraph 1 of DEFENDANTS' Answer.

**Response to Interrogatory No. 35:**

The United States objects to the term "exploitation" as vague, ambiguous, inflammatory, and reasonably subject to differing interpretations and meanings by the Parties and their experts. The United States further objects that the term "practice" is vague and ambiguous to the extent Plaintiffs intend that term to impart a meaning different from "policy." The United States further objects on the grounds that this interrogatory is premature and unduly burdensome where the Court has set an upcoming deadline for the Parties to exchange trial exhibit lists and a substantial number of potential trial witnesses have yet to be deposed.

**Interrogatory No. 36.** Identify all witnesses by name, address, and phone number who DEFENDANTS intend to have testify at trial in support DEFENDANTS' denial that DEFENDANTS have "continued a policy or practice of allowing the exploitation of fossil fuels," as set forth in paragraph 1 of DEFENDANTS' Answer.

**Response to Interrogatory No. 36:**

The United States further objects on the grounds that this interrogatory is premature and unduly burdensome where the Court has set an upcoming deadline for the Parties to exchange trial witness lists and a substantial number of potential trial witnesses have yet to be deposed.

**Interrogatory No. 38.** Identify all documents that DEFENDANTS intend to introduce at trial to support DEFENDANTS' averment that there is no scientific consensus that 350 ppm is the maximum safe level of atmospheric CO<sub>2</sub> concentration that is necessary to restore a stable climate system as set forth in paragraph 4 of DEFENDANTS' Answer.

**Response to Interrogatory No. 38:**

The United States objects on the grounds that this interrogatory is premature and unduly burdensome where the Court has set an upcoming deadline for the Parties to exchange trial exhibit lists and a substantial number of potential trial witnesses have yet to be deposed.

**Interrogatory No. 39.** Identify all witnesses by name, address, and phone number who DEFENDANTS intend to have testify at trial in support DEFENDANTS' averment that there is no scientific consensus that 350 ppm is the maximum safe level of atmospheric CO<sub>2</sub> concentration that is necessary to restore a stable climate system as set forth in paragraph 4 of DEFENDANTS' Answer.

**Response to Interrogatory No. 39:**

The United States objects on the grounds that this interrogatory is premature and unduly burdensome where the Court has set an upcoming deadline for the Parties to exchange trial witness lists and a substantial number of potential trial witnesses have yet to be deposed.

**Interrogatory No. 41.** Identify all documents that DEFENDANTS intend to introduce at trial to support DEFENDANTS' averment that the State Department is not charged with regulating petroleum products that enter or leave the country as set forth in paragraph 123 of DEFENDANTS' Answer.

**Response to Interrogatory No. 41:**

The United States objects to this interrogatory to the extent it is directed to purely legal issues to which Rule 33 does not require a response. The United States further objects on the grounds that this interrogatory is premature and unduly burdensome where the Court has set an upcoming deadline for the Parties to exchange trial exhibit lists and a substantial number of potential trial witnesses have yet to be deposed.

**Interrogatory No. 42.** Identify all witnesses by name, address, and phone number who DEFENDANTS intend to have testify at trial in support DEFENDANTS’ averment that the State Department is not charged with regulating petroleum products that enter or leave the country as set forth in paragraph 123 of DEFENDANTS’ Answer.

**Response to Interrogatory No. 42:**

The United States objects to this interrogatory to the extent it is directed to purely legal issues to which Rule 33 does not require a response. The United States further objects on the grounds that this interrogatory is premature and unduly burdensome where the Court has set an upcoming deadline for the Parties to exchange trial witness lists and a substantial number of potential trial witnesses have yet to be deposed.

**Interrogatory No. 44.** In paragraph 127 of DEFENDANTS’ Answer, “Federal Defendants aver that the Clean Power Plan is not intended to ‘preserve a habitable climate system.’” Describe the factual bases of each plan or policy of the Federal Defendants that are currently intended to preserve a habitable climate system.

**Response to Interrogatory No. 44:**

The United States objects to this interrogatory as vague, ambiguous, and overly broad and unduly burdensome. Specifically, the phrase coined by Plaintiffs in their Complaint, “habitable climate system,” is vague and ambiguous: What constitutes a “habitable climate

system” is the subject of ongoing scientific debate and is a subject on which reasonable experts disagree. Defendants further object that the phrase “each plan or policy of the Federal Defendants” is overly broad and unduly burdensome. The phrase “plan or policy” is also vague and ambiguous to the extent it is intended to include documents other than official agency policies and guidance documents published by the individual agencies or in the Federal Register.

**Interrogatory No. 48.** In paragraph 228 of DEFENDANTS’ Answer, “Defendants admit that climate change is predicted to decrease crop yield, increase crop prices, and decrease the concentrations of protein and essential minerals in crops such as wheat and rice, which lowers these crops’ nutritional value.” Describe the factual bases of each current policy that is currently being implemented and enforced by each Defendant that is attempting to prevent “decrease crop yield, increase crop prices, and decrease the concentrations of protein and essential minerals in crops such as wheat and rice, which lowers these crops’ nutritional value” as a result of climate change.

**Response to Interrogatory No. 48:**

The United States objects to the term “scientific standard” as vague, ambiguous, and reasonably susceptible to differing interpretations by the Parties and their experts. The United States also objects to the phrase “current actions by Federal Defendants” as vague and ambiguous. Plaintiffs do not identify any specific acts, e.g., final agency actions, taken by Federal Defendants that they claim constitute “current actions.” The United States objects to this interrogatory as overly broad and unduly burdensome in that it ostensibly asks the United States to address a seemingly limitless number of final and non-final “actions” – whatever Plaintiffs intend that term to encompass – taken by federal agencies or federal actors during any time in modern history.



**Interrogatory No. 49.** In paragraph 261 of DEFENDANTS’ Answer, “Federal Defendants deny the allegation that current actions by Federal Defendants are not based on any scientific standard.” Describe the “scientific standard” that “current actions by Federal Defendants” are based on.

**Response to Interrogatory No. 49:**

The United States objects to the term “scientific standard” as vague, ambiguous, and reasonably susceptible to differing interpretations by the Parties and their experts. The United States also objects to the phrase “current actions by Federal Defendants” as vague and ambiguous. Plaintiffs do not identify any specific acts, e.g., final agency actions, taken by Federal Defendants that they claim constitute “current actions.” The United States objects to this interrogatory as overly broad and unduly burdensome in that it ostensibly asks the United States to address a seemingly limitless number of final and non-final “actions” – whatever Plaintiffs intend that term to encompass – taken by federal agencies or federal actors at any time in modern history.

**Interrogatory No. 50.** Identify all documents that DEFENDANTS intend to introduce at trial to support DEFENDANTS’ denial that “actions by Federal Defendants are not based on any scientific standard,” as set forth in paragraph 261 of DEFENDANTS’ Answer.

**Response to Interrogatory No. 50:**

The United States responds by fully incorporating its Response to Interrogatory No. 49 herein. The United States further objects on the grounds that this interrogatory is premature and unduly burdensome where the Court has set an upcoming deadline for the Parties to exchange trial exhibit lists and several potential trial witnesses have yet to be deposed.

**Interrogatory No. 51.** Identify all witnesses by name, address, and phone number who DEFENDANTS intend to have testify at trial in support DEFENDANTS’ denial that “actions by Federal Defendants are not based on any scientific standard,” as set forth in paragraph 261 of DEFENDANTS’ Answer.

**Response to Interrogatory No. 51:**

The United States responds by fully incorporating its Response to Interrogatory No. 49 herein. The United States further objects on the grounds that this interrogatory is premature and unduly burdensome where the Court has set an upcoming deadline for the Parties to exchange trial witness lists and several potential trial witnesses have yet to be deposed.

**Interrogatory No. 52.** Did DEFENDANTS conduct any analysis or evaluation of ATMOSPHERIC CO<sub>2</sub> CONCENTRATIONS, CLIMATE CHANGE TARGETS, or GREENHOUSE GAS EMISSION REDUCTION TARGETS that would avoid endangerment of human health and welfare for current and future generations and/or DANGEROUS ANTHROPOGENIC INTERFERENCE WITH THE CLIMATE SYSTEM?

**Response to Interrogatory No. 52:**

The United States objects to the phrase “Dangerous Anthropogenic Interference with the Climate System” as vague, ambiguous, and reasonably susceptible to more than one meaning for the reasons stated in General Objection No. 9. What may constitute “Dangerous Anthropogenic Interference with the Climate System” is also the subject of expert debate and disagreement. The United States further objects to the phrase “any analysis or evaluation” as vague and ambiguous, and because it seeks to impose an obligation on the United States that is overly broad and unduly burdensome because no time period is specified. The United States also objects to the extent this interrogatory seeks information protected from disclosure by the deliberative process privilege or

any other privilege. The United States further objects that the phrase “avoid endangerment of human health and welfare” is vague, ambiguous, and reasonably subject to differing interpretations by the Parties and their experts. The United States also objects to this interrogatory because it seeks expert conclusions and not facts, to which no response under Rule 33 is required. The United States further objects to this interrogatory because it is not seeking information, but rather an admission or denial, and thus should have been propounded as a Request for Admission.

**Interrogatory No. 53.** If DEFENDANTS conducted any analysis or evaluation of ATMOSPHERIC CO<sub>2</sub> CONCENTRATIONS, CLIMATE CHANGE TARGETS, or GREENHOUSE GAS EMISSION REDUCTION TARGETS that would avoid endangerment of human health and welfare for current and future generations and/or DANGEROUS ANTHROPOGENIC INTERFERENCE WITH THE CLIMATE SYSTEM, identify all documents that contain such analysis or evaluation.

**Response to Interrogatory No. 53:**

The United States responds by fully incorporating its Response to Interrogatory No. 52.

**Interrogatory No. 54.** If DEFENDANTS conducted any analysis or evaluation of ATMOSPHERIC CO<sub>2</sub> CONCENTRATIONS, CLIMATE CHANGE TARGETS, or GREENHOUSE GAS EMISSION REDUCTION TARGETS that would avoid endangerment of human health and welfare for current and future generations and/or DANGEROUS ANTHROPOGENIC INTERFERENCE WITH THE CLIMATE SYSTEM, identify all witnesses by name, address, and phone number who performed such analysis or evaluation.

**Response to Interrogatory No. 54:**

The United States responds by fully incorporating its Response to Interrogatory No. 52.

**Interrogatory No. 55.** Identify whether DEFENDANTS funded any analysis or evaluation of ATMOSPHERIC CO<sub>2</sub> CONCENTRATIONS, CLIMATE CHANGE TARGETS, or GREENHOUSE GAS EMISSION REDUCTION TARGETS that would avoid endangerment of human health and welfare for current and future generations and/or DANGEROUS ANTHROPOGENIC INTERFERENCE WITH THE CLIMATE SYSTEM.

**Response to Interrogatory No. 55:**

The United States objects to the phrase “Dangerous Anthropogenic Interference with the Climate System” as vague, ambiguous, and reasonably susceptible to more than one meaning for the reasons stated in General Objection No. 9. What may constitute “Dangerous Anthropogenic Interference with the Climate System” is also the subject of expert debate and disagreement. The United States further objects to the phrase “any analysis or evaluation” as vague and ambiguous, and because it seeks to impose an obligation on the United States that is overly broad and unduly burdensome because no time period is specified. The United States also objects to the extent this interrogatory seeks information protected from disclosure by the deliberative process privilege or any other privilege. The United States further objects that the phrase “avoid endangerment of human health and welfare” is vague, ambiguous, and reasonably subject to differing interpretations by the Parties and their experts. The United States also objects to this interrogatory because it seeks expert conclusions and not facts, to which no response under Rule 33 is required.

**Interrogatory No. 56.** If DEFENDANTS funded any analysis or evaluation of ATMOSPHERIC CO<sub>2</sub> CONCENTRATIONS, CLIMATE CHANGE TARGETS, or GREENHOUSE GAS EMISSION REDUCTION TARGETS that would avoid endangerment of human health and welfare for current and future generations and/or DANGEROUS ANTHROPOGENIC

INTERFERENCE WITH THE CLIMATE SYSTEM, identify all documents that contain such analysis or evaluation.

**Response to Interrogatory No. 56:**

The United States responds by fully incorporating its Response to Interrogatory No. 55.

**Interrogatory No. 57.** If DEFENDANTS funded any analysis or evaluation of ATMOSPHERIC CO<sub>2</sub> CONCENTRATIONS, CLIMATE CHANGE TARGETS, or GREENHOUSE GAS EMISSION REDUCTION TARGETS that would avoid endangerment of human health and welfare for current and future generations and/or DANGEROUS ANTHROPOGENIC INTERFERENCE WITH THE CLIMATE SYSTEM, identify all witnesses by name, address, and phone number who performed such analysis or evaluation.

**Response to Interrogatory No. 57:**

The United States responds by fully incorporating its Response to Interrogatory No. 55.

**Interrogatory No. 58.** If DEFENDANTS will be having one or more witnesses testify at trial regarding Plaintiffs' Claims for Relief, identify all witnesses by name, address, and phone number who will be testifying as a non-expert witness.

**Response to Interrogatory No. 58:**

The United States objects that this interrogatory is premature and unduly burdensome where the Court has imposed an upcoming deadline by which the Parties must exchange trial witness lists.

**Interrogatory No. 59.** If DEFENDANTS will be having one or more witnesses testify at trial regarding Plaintiffs' Claims for Relief, identify the general subject matter on which such witness is expected to testify.

**Response to Interrogatory No. 59:**

The United States objects that this interrogatory is premature and unduly burdensome where the Court has imposed an upcoming deadline by which the Parties must exchange trial witness lists.

**Interrogatory No. 60.** If DEFENDANTS will be having one or more witnesses testify at trial regarding Plaintiffs' Claims for Relief, identify all documents that may be offered in connection with the testimony of such witness.

**Response to Interrogatory No. 60:**

The United States objects that this interrogatory is premature and unduly burdensome where the Court has imposed an upcoming deadline by which the Parties must exchange trial exhibit and witness lists.

DATED: September 28, 2018

Respectfully submitted,

JEFFREY H. WOOD

Acting Assistant Attorney General Environment &  
Natural Resources Division

/s/ Erika Norman

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

## **Exhibit 4**

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 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  
(202) 305-0445 (Duffy)  
sean.c.duffy@usdoj.gov

*Attorneys for Defendants*

UNITED STATES DISTRICT COURT  
  
DISTRICT OF OREGON

KELSEY CASCADIA ROSE JULIANA,  
*et al.*,

Plaintiffs,

v.

The United States of America, *et al.*,

Defendants.

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

**DEFENDANTS' RESPONSES TO  
PLAINTIFFS' FIRST SET OF  
INTERROGATORIES TO DEFENDANT  
UNITED STATES OF AMERICA**

RESPONSES TO PLS.'  
FIRST SET OF INTERROGATORIES



## **DEFENDANTS' RESPONSES TO PLAINTIFFS' FIRST SET OF INTERROGATORIES**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and by agreement of the Parties, the United States hereby submits these responses to Plaintiffs' first set of interrogatories. On September 28, 2018, Defendants submitted as "Partial Responses to Plaintiffs' First Set of Interrogatories" their objections to those interrogatories for which Defendants knew they would provide only objections, thus affording the Parties additional time to meet and confer as necessary in advance of trial. Defendants hereby submit their remaining responses to Plaintiffs' first set of interrogatories. As of the date of this submission, Plaintiffs have not sought to meet and confer with Defendants regarding their earlier partial responses.

### **GENERAL OBJECTIONS**

The United States hereby objects generally to Plaintiffs' interrogatories and incorporates these general objections in each and every response herein.

1. The United States objects to each and every interrogatory on the grounds that this case is improper for several jurisdictional and substantive reasons, including but not limited to Plaintiffs' lack of standing to bring this lawsuit. The United States acknowledges that the Court has either disagreed with or not yet ruled on Defendants' dispositive challenges, and therefore is not refusing to respond to any interrogatory based solely upon this objection.

2. The United States objects to each and every interrogatory on the grounds that separation of powers bars discovery under the circumstances presented by this case where Plaintiffs' attempts to probe the views of federal agencies concerning questions of national environmental and energy policy would usurp the role of the President in supervising and seeking the opinions of Executive Branch agencies, and where Plaintiffs' attempts to compel the agencies to formulate policy positions through their discovery responses infringes on Congress's

role to establish the means by which agencies may formulate policy, including under the procedures prescribed by the Administrative Procedure Act (“APA”). The United States acknowledges that the Court has not accepted Defendants’ view that separation of powers bars discovery in this case, and therefore is not refusing to respond to any interrogatory based solely upon this objection.

3. The United States objects to each and every interrogatory on the grounds that discovery in this case is impermissible under the APA, which though not invoked by Plaintiffs provides the only right of action for challenging actions or inactions by federal agencies, including on constitutional grounds. The United States acknowledges that the Court has not accepted Defendants’ view that the APA bars discovery in this case, and therefore is not refusing to respond to any interrogatory based solely upon this objection.

4. The United States objects to any and all interrogatories or parts thereof directed to issues of pure law — i.e., legal issues not dependent on the facts of the case. Such interrogatories are not permitted by Rule 33.

5. The United States objects to any and all interrogatories seeking information on trial witnesses and exhibits as premature. The United States will provide Plaintiffs with trial witness and exhibit lists on or before the deadline for the exchange of trial and exhibit lists set by the Court. Plaintiffs’ request that the United States undertake those efforts twice in short succession is unduly burdensome. Further, at this time the United States does not know the identity of fact witnesses that may provide testimony at trial. The United States will supplement these responses when that information becomes available.

6. Discovery in this action is ongoing. These responses and objections are made without prejudice to, and are not a waiver of, the United States' right to supplement these responses or objections.

7. The United States objects to any and all definitions, instructions, and interrogatories, or any parts thereof that call for information or materials protected by the attorney client privilege, the attorney work product doctrine, or any other privilege, immunity, or statutory prohibition.

8. The United States objects to any and all definitions, instructions, interrogatories, or any parts thereof that purport to require the United States to provide information that is irrelevant to this lawsuit, outside the scope of discovery, or not reasonably calculated to lead to the discovery of admissible evidence.

9. The United States objects to any and all definitions, instructions, and interrogatories or any parts thereof that seek to impose burdens on the United States in excess of the United States' obligations under the Federal Rules of Civil Procedure.

10. The United States objects to any and all interrogatories or parts thereof that are overbroad, oppressive, or unduly burdensome.

11. The United States objects to any and all interrogatories or parts thereof that seek information not reasonably available to the United States.

12. The United States objects to Plaintiffs' use of the term DANGEROUS ANTHROPOGENIC INTERFERENCE WITH THE CLIMATE SYSTEM and to each and every interrogatory employing that term as vague, ambiguous, and reasonably susceptible to more than one meaning. The United Nations Framework Convention on Climate Change does not define "dangerous anthropogenic interference with the climate system" and Plaintiffs'

definition of the term to “include ‘large global warming,’ ‘anthropogenic threats to the stability of the climate,’ ‘large-scale climate change,’ ‘dangerous human-made interference with climate,’ ‘the worst impacts of climate change,’ and ‘unacceptable concentration of greenhouse gases’” is vague, ambiguous, overly broad, and susceptible to multiple interpretations and meanings. Specifically, the terms “dangerous,” “large,” “threats,” “stability,” “large-scale,” “interference,” “worst impacts,” “unacceptable concentration,” are overly broad and highly subjective terms to which the United States cannot reasonably formulate any response.

13. The United States objects to the Plaintiffs’ use of the term CLIMATE CHANGE and to each and every interrogatory employing that term as vague, ambiguous, and reasonably susceptible to more than one meaning. The United States is unable to locate Plaintiffs’ chosen definition of “climate change” in any scientific source. Plaintiffs appear to have cobbled together their own definition, picking and choosing pieces from various sources, including the United Nations Framework Convention on Climate Change and the Intergovernmental Panel on Climate Change, in order to best suit their legal theories. Further, the phrases “directly or indirectly to human activity” and “other impacts resulting from the increased concentration of greenhouse gases” are overly broad, ambiguous, and highly subjective. Finally, to the extent Plaintiffs’ define “climate change” by reference to a slew of other undefined, overly broad, and vague and ambiguous terms— “inadvertent weather modification,” “the greenhouse effect,” “CO<sub>2</sub> problem,” “carbon dioxide problem,” “climate changes,” “GLOBAL WARMING,” “global change,” “global heating,” “atmospheric pollution by carbon dioxide or other greenhouse gases,” and “dilution of carbon 14 by fossil carbon” – the United States is unable to reasonably formulate any response.

## **RESPONSES TO INTERROGATORIES**

**Interrogatory No. 1.** Describe the factual bases that support DEFENDANTS’ contention that Plaintiffs’ claims are barred by a lack of standing as set forth in DEFENDANTS’ Affirmative Defense No. 2.

### **Response to Interrogatory No. 1:**

The United States objects to this interrogatory because it is directed to purely legal issues on which the United States has sought summary judgment and to which Rule 33 does not require a response.

**Interrogatory No. 7.** Describe the factual bases that support DEFENDANTS’ contention that Plaintiffs failed to exhaust their administrative remedies as set forth in DEFENDANTS’ Affirmative Defense No. 5.

### **Response to Interrogatory No. 7:**

The United States objects to this interrogatory because it is directed to purely legal issues on which the United States has sought summary judgment and to which Rule 33 does not require a response. Specifically, the APA provides the only right of action for challenging actions or inactions by federal agencies and Plaintiffs have failed to identify any final agency action.

**Interrogatory No. 14.** Identify the “duly enacted federal statutes” that DEFENDANTS contend Plaintiffs’ requested relief seeks to effectively repeal as set forth in DEFENDANTS’ Affirmative Defense No. 7.

### **Response to Interrogatory No. 14:**

The United States objects to this interrogatory as overly broad and unduly burdensome to the extent it calls for an exhaustive list of federal statutes potentially impaired by Plaintiffs’ requested relief. The relief requested by Plaintiffs in this lawsuit is so sweeping that an

indeterminable number of federal statutes may be negated, overwritten, or otherwise affected in whole or in part by Plaintiffs' demand that the United States phase out *all* fossil fuels and GHG emissions.

Federal statutes that could be impacted by Plaintiffs' requested relief include but are by no means limited to statutes governing land leasing and development; the outer continental shelf; energy policy; and environmental protection. The following list of potentially impacted statutes is intended to provide examples of such federal statutes and is not intended to be exhaustive:

Subject to, and without waiving, those objections, the United States provides the following response which it does not intend to constitute an exhaustive list and which it reserves the right to supplement and amend:

1. Mineral Leasing Act, 30 U.S.C. §§ 181-287, including but not limited to §§ 226, 201, 241.
2. Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-360, including but not limited to § 352
3. Indian Mineral Leasing Act of 1938, 25 U.S.C. §§ 396a-g
4. Indian Mineral Development Act of 1982, 25 U.S.C. §§ 2101-2108
5. Act of March 3, 1909, 25 U.S.C. § 396
6. Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. §§ 1331-1356b, including but not limited to §§ 1332(3), 1337, 1344
7. Outer Continental Shelf Resource Management, 43 U.S.C. §§ 1801-1866
8. Naval Petroleum Reserves Production Act, 42 U.S.C. §§ 6501-6507
9. Tax Cuts and Jobs Act, Pub. L. No. 115-97, 131 Stat. 2054, 2235-37, § 20001, 16 U.S.C. § 3143 note, § 669dd note (Dec. 22, 2017) (Oil and Gas Leasing in the Arctic National Wildlife Refuge).
10. Clean Air Act (CAA), 42 U.S.C. §§ 7401-7671q, including but not limited to §§ 7411, 7412, 7651n
11. Energy Policy Act of 2005, 119 Stat. 594, 42 U.S.C. §§ 15801-16538, including but not limited to § 15927.

RESPONSES TO PLS.'

FIRST SET OF INTERROGATORIES

12. Alaska Natural Gas Pipeline Act of 2004, 15 U.S.C. §§ 720-720n
13. Alaska Natural Gas Transportation Act of 1976, 15 U.S.C. §§ 719-719o
14. Department of Energy Organization Act, 42 U.S.C. §§ 7101-7386k
15. Energy Independence and Security Act of 2007 (EISA), 42 U.S.C. §§ 17001-17386
16. Energy Policy Act of 1992, 42 U.S.C. §§ 13201-13574
17. Energy Policy and Conservation Act, 42 U.S.C. §§ 6201-6422, including but not limited §§ 6231- 6247b, 6250-6250f.
18. Deepwater Port Act of 1974, 33 U.S.C. §§ 1501-1524
19. Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. §§ 1701-1759
20. Resource Conservation and Recovery Act of 1976 (RCRA), Pub. L. No. 94-580, 90 Stat. 2795
21. Clean Water Act (CWA), 33 U.S.C. §§ 1251-1388
22. Federal Power Act, 16 U.S.C. §§ 791a-828c, including but not limited to §§ 824a(c), 824a(e), 16 824o-1
23. Interstate Commerce Act of 1887, 24 Stat. 379
24. National Energy Conservation Policy Act (NECPA), 42 U.S.C. §§ 8201-8287d
25. Natural Gas Act, 15 U.S.C. §§ 717-717z, including but not limited to § 717b
26. Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. §§ 3301-3432
27. Natural Gas Wellhead Decontrol Act of 1989, Pub. L. No. 101-60, 103 Stat. 157
28. Oil Pollution Act of 1990 (OPA), 42 U.S.C. §§ 2701-2762
29. Surface Mining Control and Reclamation Act of 1977 (SMCRA), 30 U.S.C. §§ 1201-1328
30. Act of March 4, 1917, 39 Stat. 1150, as supplemented; 16 U.S.C. § 520
31. President's Reorganization Plan No. 3 of 1946, 60 Stat. 1097; 5 U.S.C. App.
32. Geothermal Steam Act of 1970, 30 U.S.C. §§ 1001-1028
33. Federal Coal Leasing Amendments Act of 1976 (FCLAA), Pub. L. No. 94-377, 90 Stat. 1083
34. National Materials and Mineral Policy, Research and Development Act of 1980, 30 U.S.C. §§ 1601-1605

35. National Forests Establishment and Administration, 16 U.S.C. §§ 471-539r, including but not limited to §§ 478, 551.
36. Materials Act of 1947 (Minerals Management Act of 1947), 30 U.S.C. §§ 601-615, including but not limited to §§ 601, 611
37. 94 Stat. 2400.
38. Naval Petroleum Reserves, 10 U.S.C. §§ 7420-7439, *amended by* Pub. L. No. 115-232, 132 Stat. 1636 (2018).
39. Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. §§ 8301-8484, including but not limited to §§ 8311(d), 8323(a), (c), 8321(a)-(b), 8322(a)(1), (b)-(f).
40. Energy Supply and Environmental Coordination Act of 1974 (ESECA), 15 U.S.C. § 791-798
41. Defense Production Act of 1950, 50 U.S.C. §§ 4501-4568, including but not limited to §§ 4511(a), (d).
42. Federal Energy Administration Act of 1974, 15 U.S.C. §§ 761-790h
43. Energy Reorganization Act of 1974 (ERA), 42 U.S.C. §§ 5801-5891
44. Federal Nonnuclear Energy Research and Development Act of 1974, 42 U.S.C. §§ 5901-5916, including but not limited to §§ 5903, 5903d, § 5916
45. 10 U.S.C. § 7229 (Purchase of Fuel)
46. 49 U.S.C. § Chapter 329 (Automobile Fuel Economy)
47. Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240 § 1008, 105 Stat. 1932, 23 U.S.C. §149

**Interrogatory No. 18.** Identify the “numerous duly issued federal regulations” that DEFENDANTS contend Plaintiffs’ requested relief seeks to vacate as set forth in DEFENDANTS’ Affirmative Defense No. 8.

**Response to Interrogatory No. 18:**

The United States objects to this interrogatory as overly broad and unduly burdensome to the extent it calls for an exhaustive list of federal regulations potentially impaired by Plaintiffs’ requested relief. The relief requested by Plaintiffs in this lawsuit is so sweeping that an

RESPONSES TO PLS.’

FIRST SET OF INTERROGATORIES



indeterminable number of federal regulations may be negated, overwritten, or otherwise affected in whole or in part by Plaintiffs' demand that the United States phase out *all* fossil fuels and GHG emissions.

Subject to, and without waiving, those objections, the United States provides the following response which it does not intend to constitute an exhaustive list and which it reserves the right to supplement and amend:

Federal regulations that could be impacted by Plaintiffs' requested relief include but are by no means limited to regulations on emissions from vehicles and engines; mining; electric power generation, transmission and distribution; fossil fuel combustion waste; fuels; natural gas; onshore oil and gas; offshore oil and gas; and petroleum. The following list of potentially impacted regulations is intended to provide examples of such federal regulations and is not intended to be exhaustive:

1. 43 C.F.R. Part 3100 – Oil and Gas Leasing
2. 43 C.F.R. Part 3110 – Non-competitive Oil and Gas Leasing
3. 43 C.F.R. Part 3120 – Competitive Oil and Gas Leasing
4. 43 C.F.R. Part 3130 – Oil and Gas Leasing: National Petroleum Reserve, Alaska
5. 43 C.F.R. Part 3140 – Leasing in Special Tar Sand Areas
6. 43 C.F.R. Part 3160 – Onshore Oil and Gas Operations
7. 43 C.F.R. Group 3400 – Coal Management
8. 43 C.F.R. Part 3900 – Oil Shale Management
9. 30 C.F.R. Part 556, subpart B – Oil and Gas Five Year Leasing Program
10. 30 C.F.R. Part 556, subpart C – Planning and Holding a Lease Sale
11. 25 C.F.R. Part 200 – Terms and Conditions: Coal Leases
12. 25 C.F.R. Part 211 – Leasing of Tribal Lands for Mineral Development
13. 25 C.F.R. Part 212 – Leasing of Allotted Lands for Mineral Development
14. 25 C.F.R. Part 213 – Leasing of Restricted Lands of Members of Five Civilized Tribes, Oklahoma, for Mining

15. 25 C.F.R. Part 214 – Leasing of Osage Reservation Lands, Oklahoma, for Mining, Except Oil and Gas
16. 25 C.F.R. Part 216 – Surface Exploration, Mining, and Reclamation of Lands
17. 25 C.F.R. Part 217 – Management of Tribal Assets of Ute Indian Tribe, Uintah and Ouray Reservation, Utah, by the Tribe and the Ute Distribution Corp.
18. 25 C.F.R. Part 224 – Tribal Energy Resource Agreements under the Indian Tribal Energy Development and Self Determination Act
19. 25 C.F.R. Part 225 – Oil and Gas, Geothermal, and Solid Minerals Agreements
20. 25 C.F.R. Part 226 – Leasing of Osage Reservation Lands for Oil and Gas Mining
21. 25 C.F.R. Part 227 – Leasing of Certain Lands in Wind River Indian Reservation, Wyoming, for Oil and Gas Mining
22. 40 C.F.R. Part 60 Subparts GG and KKKK – Standards for Performance of Station Gas Turbines and Standards of Performance for Stationary Combustion Turbines
23. 40 C.F.R. Part 60 Subpart Y – Standards of Performance for Coal Preparation and Processing Plants
24. 40 C.F.R. Part 60 Subpart Da – Standards of Performance for Electric Utility Steam Generating Units
25. 40 C.F.R. Part 63 Subpart UUUUU – National Emission Standards for Hazardous Air Pollutants: Coal-and-Oil-Fired Electric Utility Steam Generating Units
26. 40 C.F.R. Part 86 – Control of Emissions from New and in-Use Highway Vehicles and Engines
27. 40 C.F.R. Part 600 – Fuel Economy and Greenhouse Gas Exhaust Emissions of Motor Vehicles
28. 40 C.F.R. Part 1036 – Control of Emissions from New and in-Use Heavy-Duty Highway Engines
29. 40 C.F.R. Part 1037 – Control of Emissions from New Heavy – Duty Motor Vehicles
30. 40 C.F.R. Part 423 – Steam Electric Power Generating Point Source Category
31. 36 C.F.R. Part 228 – Minerals
32. 10 C.F.R. Part 590 – Administrative Procedures With Respect to the Import and Export of Natural Gas

33. 10 C.F.R. Part 625 – Price Competitive Sale of Strategic Petroleum Reserve  
Petroleum
34. 10 C.F.R. Part 626 – Procedures for Acquisition of Petroleum for the Strategic  
Petroleum Reserve
35. 10 C.F.R. §§ 205.370 - 205.379 – Emergency Interconnection of Electric Facilities  
and the Transfer of Electricity to Alleviate an Emergency Shortage of Electric Power
36. 10 C.F.R. §§ 205.300 - 205.309 – Application for Authorization to Transmit Electric  
Energy to a Foreign Country
37. 10 C.F.R. §§ 205.380 - 205.391 – Internal Procedures for Issuance of a Grid Security  
Emergency Order
38. 10 C.F.R. §§ 501.60 – 501.69 – Exemptions and Certifications
39. 10 C.F.R. §§ 503.4 – 503.14 – General Requirements for Exemptions
40. 10 C.F.R. §§ 503.20 – 503.25 – Temporary Exemptions for New Facilities
41. 10 C.F.R. §§ 503.30 – 503.38 – Permanent Exemptions for New Facilities
42. 10 C.F.R. §§ 216.1 – 216.9 – Materials Allocation and Priority Performance Under  
Contracts or Orders to Maximize Domestic Energy Supplies
43. 10 C.F.R. Part 221 – Priority Supply of Crude Oil and Petroleum Products to the  
Department of Defense Under the Defense Production Act
44. 49 C.F.R. Part 525 – Exemptions from Average Fuel Economy Standards
45. 49 C.F.R. Part 531 – Passenger Automobile Average Fuel Economy Standards
46. 49 C.F.R. Part 533 – Light Truck Fuel Economy Standards
47. 49 C.F.R. Part 535 – Medium- and Heavy-Duty Vehicle Fuel Efficiency Program
49. 49 C.F.R. Part 536 – Transfer and Trading of Fuel Economy Credits
50. 49 C.F.R. Part 537 – Automotive Fuel Economy Reports
51. 49 C.F.R. Part 538 – Manufacturing Incentives for Alternative Fuel Vehicles

**Interrogatory No. 28.** Identify the “international agreements entered into by the United States”

DEFENDANTS contend bar Plaintiffs’ requested relief as set forth in DEFENDANTS’

Affirmative Defense No. 11.

**Response to Interrogatory No. 28:**

RESPONSES TO PLS.’

FIRST SET OF INTERROGATORIES

The United States objects to this interrogatory as overly broad and unduly burdensome in that it purports to require the United States to list all of the international agreements that could be negated, disrupted, or violated in whole or in part by Plaintiffs' plan to phase out *all* fossil fuels and GHGs, including, potentially stopping all fossil fuel exploration and production activities and stopping all imports, exports, sale, and consumption of fossil fuels by or within the United States.

Subject to, and without waiving, those objections, the United States provides the following response which it does not intend to be exhaustive, and which it reserves the right to supplement and amend:

An order by the Court "to prepare and implement an enforceable national remedial plan to phase out fossil fuel emissions and draw down excess atmospheric CO<sub>2</sub>" could disrupt and/or create substantial challenges for U.S. implementation of a variety of international agreements to which the United States is a party. Examples include but are by no means limited to certain multilateral and bilateral cooperative agreements in the area of energy security, such as the Agreement on an International Energy Program (Nov. 4, 1974), which requires the United States to maintain certain fuel reserves, and the Memorandum of Agreement Concerning an Oil Supply Arrangement (June 22, 1979), which requires the United States, in certain circumstances, to supply Israel with oil. Plaintiffs' relief could also potentially raise substantial issues under multilateral and bilateral trade and/or investment agreements to which the United States is a party.

**Interrogatory No. 34.** Describe the factual bases that support DEFENDANTS' denial that DEFENDANTS have "continued a policy or practice of allowing the exploitation of fossil fuels," as set forth in paragraph 1 of DEFENDANTS' Answer.

**Response to Interrogatory No. 34:**

The United States objects to the term “exploitation” as vague, ambiguous, inflammatory, and as reasonably subject to differing interpretations and meanings by the Parties and their experts. The United States further objects that the term “practice” is vague and ambiguous to the extent Plaintiffs intend that term to impart a meaning different from “policy.”

**Interrogatory No. 37.** Describe the factual bases that support DEFENDANTS’ averment that there is no scientific consensus that 350 parts per million (ppm) is the maximum safe level of atmospheric CO<sub>2</sub> concentration that is necessary to restore a stable climate system as set forth in paragraph 4 of DEFENDANTS’ Answer.

**Response to Interrogatory No. 37:**

The United States fully incorporates its General Objections herein.

Subject to, and without waiving, those objections, the United States provides the following response which it reserves the right to supplement and amend:

The United States is unaware of any statement by the U.S. Global Change Research Program (USGCRP), the National Academies, or the Intergovernmental Panel on Climate Change, pronouncing 350 ppm (or any given concentration) to be a “maximum safe level.” Indeed, the National Academies 2011 assessment, “Climate Stabilization Targets” states that the “paleoclimate argument for 350 ppm as a danger threshold must be considered speculative.”

**Interrogatory No. 38.** Identify all documents that DEFENDANTS intend to introduce at trial to support DEFENDANTS’ averment that there is no scientific consensus that 350 ppm is the maximum safe level of atmospheric CO<sub>2</sub> concentration that is necessary to restore a stable climate system as set forth in paragraph 4 of DEFENDANTS’ Answer.

**Response to Interrogatory No. 38:**

RESPONSES TO PLS.’

FIRST SET OF INTERROGATORIES

The United States objects on the grounds that this interrogatory is premature and unduly burdensome where the Court has set an upcoming deadline for the Parties to exchange trial exhibit lists and a substantial number of potential trial witnesses have yet to be deposed.

Subject to, and without waiving, those objections, the United States provides the following response which it reserves the right to supplement and amend:

The National Research Council of the National Academies, Climate Stabilization Targets: Emissions, Concentrations, and Impacts over Decades to Millennia (2011).

Various USGCRP reports.

**Interrogatory No. 40.** Describe the factual bases that support DEFENDANTS’ averment that the State Department is not charged with regulating petroleum products that enter or leave the country as set forth in paragraph 123 of DEFENDANTS’ Answer.

**Response to Interrogatory No. 40:**

The United States objects to this interrogatory to the extent it is directed to purely legal issues to which Rule 33 does not require a response.

**Interrogatory No. 43.** Defendants’ Answer to Paragraph 123 states, in part, as follows: “This additional language underscores that climate change is a global challenge that the United States addresses together with international partners and stakeholders.” Describe the factual bases of how the United States is addressing the “global challenge” of climate change “with international partners and stakeholders.”

**Response to Interrogatory No. 43:**

The United States objects that Plaintiffs’ interrogatory is overly broad and unduly burdensome in that it ostensibly requests facts and information related to each and every treaty, agreement, policy, partnership, understanding, arrangement, or any other federal action related to

climate change. The interrogatory is also overly broad and unduly burdensome in that it purports to include both formal and informal actions and binding and non-binding agreements of any federal agency or federal actor over any point in time in modern history.

Subject to, and without waiving, those objections, the United States provides the following response which it does not intend to be exhaustive and which it reserves the right to supplement and amend:

The United States participates in a variety of international agreements that address climate change issues, and works with partners through programs related to addressing climate change, including the promotion of energy efficiency and lower-emission fuel sources. Multilateral agreements, fora, and initiatives that the United States participates in include but are by no means limited to the United Nations Framework Convention on Climate Change (UNFCCC), the International Renewable Energy Agency (IRENA), and the Clean Energy Ministerial (CEM).

The United States also implements a variety of regional and bilateral programs and initiatives to support the development and deployment of clean and more efficient energy, as well as programs to support sustainable landscapes and forests. These include but are by no means limited to the Southeast Asia Efficiency Initiative, the Pacific Energy Transition Initiative, the U.S.-Africa Clean Energy Finance Initiative (ACEF), the U.S.-India Clean Energy Finance Task Force, the U.S.-Israel Clean Energy Task Force, the U.S.-Brazil Forum on Innovative Forest Investments, and the Initiative for Sustainable Forest Landscapes. Other examples of bilateral and multilateral activities related to climate change and energy are described on the Department of Energy's webpage at <https://www.energy.gov/fe/services/international-cooperation>.

**Interrogatory No. 45.** In paragraph 131 of DEFENDANTS’ Answer, DEFENDANTS “aver that the important details of the carbon cycle and other aspects of climate change were not widely understood until many decades later” than 1899. Describe the factual bases of each important detail of the carbon cycle and other aspects of climate change that were not widely understood “until many decades later.”

**Response to Interrogatory No. 45:**

The United States objects that this interrogatory is overly broad and unduly burdensome in that it seeks information concerning “each” important detail of the carbon cycle and all of the “other aspects” of climate change.

Subject to, and without waiving, those objections, the United States provides the following response which it reserves the right to supplement and amend:

Key details of the carbon cycle and other aspects of climate change were not understood, much less “widely understood,” until at least the late 1950s. In 1957, Revelle and Suess published “Carbon Dioxide Exchange Between Atmosphere and Ocean and the Question of an Increase of Atmospheric CO<sub>2</sub> during the Past Decades,” which developed the “Revelle factor”. Revelle & Suess summarized several areas of active disagreement at that time, including the rate of oceanic uptake of carbon dioxide, confidence in observed carbon dioxide concentrations (eventually resolved by the Keeling record at Mauna Loa, where measurements did not start until 1958), and climate sensitivity to elevated carbon dioxide concentrations. Also in the late 1950s, Gilbert Plass made key advancements in the understanding of the radiative properties of CO<sub>2</sub>, as reflected in his 1956 paper, “The Carbon Dioxide Theory of Climatic Change.” In 1979, the National Academies of Sciences released “Carbon Dioxide and Climate: A Scientific Assessment,” which synthesized the available climate science.



**Interrogatory No. 46.** In paragraph 208 of DEFENDANTS’ Answer, “Defendants admit that stabilizing atmospheric CO<sub>2</sub> concentrations will require deep reductions in CO<sub>2</sub> emissions.”

Describe the factual bases of each current policy that is currently being implemented and enforced by each Defendant that are attempting to “stabiliz[e] atmospheric CO<sub>2</sub> concentrations” through requiring “deep reductions in CO<sub>2</sub> emissions.”

**Response to Interrogatory No. 46:**

The United States objects to the phrase “each current policy that is currently being implemented and enforced by each Defendant” as vague, ambiguous, and erroneous: Congress enacts statutes and confers enforcement authority for those statutes on federal agencies, which in turn promulgate regulations, develop and implement policies, and/or write guidance. The federal agencies enforce federal laws, not policies. The United States further objects that the term “policy” as used by Plaintiffs is vague and ambiguous. It is unclear whether Plaintiffs intend the term “policy” to refer only to publicly available, final written policies drafted by federal agencies in service of their enforcement authority or something else. The United States further objects to this interrogatory as overly broad and unduly burdensome to the extent it requests an exhaustive list of policies to reduce carbon dioxide emissions. The United States further objects to this interrogatory to the extent it erroneously assumes federal agencies have been given the authority to “require deep reductions in CO<sub>2</sub> emissions.”

Subject to, and without waiving, those objections, the United States provides the following *examples* of programs and categories of programs implemented by federal agencies to reduce carbon dioxide emissions. This response is not intended as an exhaustive list, and the United States reserves its right to supplement and amend its response to this interrogatory:

- EPA undertakes a multitude of climate-related rulemakings, policies, and initiatives, including but by no means limited to: Municipal Solid Waste Landfill Air Pollution Standards; Oil and Natural Gas Air Pollution Standards; Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Clean Air Act Permitting for Greenhouse Gases; New Motor Vehicle Standards; the Renewable Fuel Standard Program; Energy Efficiency programs; Greenhouse Gas Reporting Program; Endangerment and Cause or Contribute Findings for Greenhouse Gases under the Section 202(a) of the Clean Air Act; Finding That Greenhouse Gas Emissions From Aircraft Cause or Contribute to Air Pollution That May Reasonably Be Anticipated To Endanger Public Health and Welfare;
- EPA contributes to climate research through the U.S. Global Change Research Program and the Intergovernmental Panel on Climate Change;
- EPA's Office of Research and Development conducts research to understand the environmental and health impacts of climate change and to provide sustainable solutions for adapting to and reducing the impact from a changing climate;
- EPA's State and Local Climate and Energy Program provides technical assistance, analytical tools, and outreach support on climate change issues to state, local, and tribal governments;
- EPA's Climate Ready Estuaries and Climate Ready Water Utilities programs help coastal resource managers and water utility managers plan and prepare for climate change;
- EPA's efforts to recognize leading organizations that adopt energy efficiency and renewable energy policies and practices;
- EPA's U.S. GHG Inventory;

- USDA, Building Blocks for Climate Smart Agriculture and Forestry (2016);
- The international agreements, initiatives, and programs pertaining to emissions reductions or promotion of clean energy resources that are described in the United States' Response to Interrogatory No. 43;
- Various grants issued by the Federal Transit Administration for transit vehicles employing advanced technology (e.g., hybrid, fuel cell) and alternative fuels (e.g., CNG, electricity, hydrogen);
- The Federal Aviation Administration CLEEN Program;
- Federal Highway Administration Congestion Mitigation and Air Quality Improvement Program;
- Various Department of Transportation studies, including but by no means limited to "Transportation's Role in Addressing U.S. Greenhouse Gas Emissions," "Fuel Options for Reducing Greenhouse Gas Emissions from Motor Vehicles," and "Moving Cooler: An Analysis of Transportation Strategies for Reducing Greenhouse Gas Emissions";
- The Federal Aviation Administration's, in partnership with industry, Commercial Aviation Alternative Fuels Initiative and Center of Excellence for Alternative Jet Fuels and Environment;
- Ongoing efforts by the Federal Highway Administration to establish a national network of alternative fueling and charging infrastructure along national highway system corridors;
- The Bureau of Ocean Energy Management (BOEM) Gulfwide Offshore Activity Data System (GOADS) Emission Inventory (2000-2017);

- Various BOEM renewable energy programs, including but by no means limited to National Offshore Wind Strategy, Renewable Energy Program, Wind Energy Commercial Leasing Process, and any other renewable energy programs listed in BOEM's yearly Budget Justifications;
- The Bureau of Reclamation's ownership and operation of 53 hydroelectric plants as part of its Hydro Program;
- The Bureau of Indian Affairs' (BIA's) Tribal Climate Change Adaptation and Ocean and Coastal Management Planning Projects;
- Various BIA funding awards in areas of climate adaptation, oceans and coastal funding;
- Various BIA approvals of authorized purpose leases for wind and solar;
- National Parks Service (NPS) Green Parks Plan;
- (NPS) Green Parks Monitoring and Tracking Progress;
- Various Bureau of Land Management (BLM) wind energy development projects;
- Various BLM-approved solar projects;
- Various BLM-approved geothermal projects.
- Efforts by Department of the Interior to address GHG emissions as described in the Department of the Interior's Economic Contributions, Fiscal Year 2011, U.S. Department of the Interior, Economic Report, Fiscal Year 2012, U.S. Department of the Interior, Economic Report, Fiscal Year 2014, U.S. Department of the Interior, Economic Report, Fiscal Year 2015, Adaptive Management, The U.S. Department of the Interior's Application Guide (2012).

**Interrogatory No. 47.** In paragraph 214 of DEFENDANTS' Answer, DEFENDANTS

acknowledge "sea level rise will lead to increases in flooding and other damages in coastal and

RESPONSES TO PLS.'

FIRST SET OF INTERROGATORIES

island communities.” Describe the factual bases of each current policy that is currently being implemented and enforced by each Defendant that is attempting to prevent “sea level rise [that] will lead to increases in flooding and other damages in coastal and island communities.”

**Response to Interrogatory No. 47:**

The United States objects to the phrase “each current policy that is currently being implemented and enforced by each Defendant” as vague, ambiguous, and erroneous: Congress enacts statutes and confers enforcement authority for those statutes on federal agencies, which in turn promulgate regulations, develop and implement policies, and/or write guidance. The federal agencies enforce federal laws, not policies. The United States further objects that the term “policy” as used by Plaintiffs is vague and ambiguous. It is unclear whether Plaintiffs intend the term “policy” to refer only to publicly available, final written policies drafted by federal agencies in service of their enforcement authority or something else. The United States further objects to this interrogatory to the extent it erroneously assumes that a federal agency has been given regulatory authority to attempt to prevent or address the risks associated with sea level rise.

Subject to, and without waiving, those objections, the United States provides the following response which it reserves the right to supplement and amend:

The EPA National Water Program published the “EPA National Water Program Strategy: Response to Climate Change.” Work by the U.S. Global Change Research Program, the National Research Council, and other scientific literature are incorporated into this strategy document. The Development of the Climate Ready Estuaries program is one of the forty-four key actions described in the strategy document. The strategy document was updated in 2012 to include (among other items) the development of the Creating Resilient Water Utilities initiative

to assist water utilities, including those located in coastal regions. Annual workplans and reports describe work planned and accomplished through 2016.

EPA's Climate Ready Estuaries (CRE) program works to help the National Estuary Program (NEP) and other coastal environmental managers address climate change in watersheds and coastal areas. This effort, initiated in 2008, brings together EPA's Oceans and Coastal Protection Programs and Climate Change Programs to build capacity in the NEPs and coastal communities as they prepare to adapt to the effects of climate change. CRE works to: assess climate change vulnerabilities, develop and implement adaptation strategies, and engage and educate stakeholders. CRE has produced a variety of reports and tools since 2008 and has funded 72 partnership projects. In December 2014, EPA published new funding guidance for the 28 National Estuary Programs that provides that by 2020 the Comprehensive Conservation and Management Plan (CCMP) for each NEP must be informed by a broad, risk-based climate change vulnerability assessment.

EPA's Creating Resilient Water Utilities (CRWU) initiative has worked to provide drinking water, wastewater and stormwater utilities with practical tools, training and technical assistance needed to increase resilience to extreme weather events. Through a comprehensive planning process, CRWU assists water utilities by promoting a clear understanding of potential long-term adaptation options to inform decision-making on infrastructure financing. CRWU has produced a number of tools, including the Climate Resilience Evaluation and Awareness Tool (CREAT).

NOAA is co-leading the Sea Level Rise and Coastal Flood Hazard Scenarios and Tools Interagency Task Force. The task force began its work in August 2015 and has focused on three primary tasks: 1) updating scenarios of global mean sea level (GMSL) rise; 2) integrating the

global scenarios with regional factors contributing to sea level change for the entire U.S. coastline; and 3) incorporating these regionally appropriate scenarios within coastal risk management tools and capabilities deployed by individual agencies in support of the needs of specific stakeholder groups and user communities.

NOAA has developed a number of products based upon NOAA-led research and reports that are helping communities understand and prepare for future changes in both mean sea level and related coastal flooding. NOAA has developed the Sea Level Rise Viewer, which provides elevation maps of land exposed to future possible scenarios of sea level rise. This web mapping tool can be used to visualize community-level impacts from coastal flooding or sea level rise (up to 10 feet above average high tides). Photo simulations of how future flooding might impact local landmarks are also provided, as well as data related to water depth, connectivity, high tide flooding, socio-economic vulnerability, wetland loss and migration, and mapping confidence. NOAA has also developed the Inundation Dashboard, which tracks historical exceedances of sea level rise related high-tide flooding. NOAA's Climate Resilience Toolkit provides projections of coastal flooding based upon the future scenarios of sea level rise. NOAA's sea level trends online provides information on historical sea level rise at locations around the U.S. relative to future scenarios of sea level rise. NOAA is also starting to provide annual "high tide flooding outlooks," which provide next-year predictions of coastal high tide flooding based upon historical trends and expected El Nino strength.

In 2010, the U.S. Department of the Navy issued a Climate Change Roadmap that detailed a list of Navy actions to assess, predict, and adapt to global climate change from FY10-14. In 2014, the U.S. Department of Defense issued a Climate Change Adaptation Roadmap

detailing its efforts in two areas: adaptation, or efforts to plan for the changes that are occurring or expected to occur; and mitigation, or efforts that reduce greenhouse gas emissions.

The United States Army Corps of Engineers (USACE) has collected measurements of mean sea level, tides, surge, and other coastal water levels since the late 1700s. In the 1960s, USACE began work on the 1971 National Shoreline Study to better understand the effects of changing sea levels on coastal erosion. Since at least 1986, USACE has considered sea level change (SLC) in the planning and design of coastal flood control and erosion protection projects. USACE guidance beginning in the late 1980s requires that project plans consider the full range of sea-level rise scenarios put forth by the National Research Council (NRC) and in certain instances USACE considers higher potential rates of sea-level change. USACE also uses a sea-level tracker tool that visualizes trends in long-term tide gauge data and compares observed changes to projected changes in SLC. Actions taken to address sea level rise with respect to particular projects may include but are by no means limited to preparing reports to assess the climate vulnerabilities of the project, developing flood-mapping tools for advance planning and real-time use during storm events, equipment installation, and participation in intergovernmental alliances or projects.

**Interrogatory No. 48.** In paragraph 228 of DEFENDANTS' Answer, "Defendants admit that climate change is predicted to decrease crop yield, increase crop prices, and decrease the concentrations of protein and essential minerals in crops such as wheat and rice, which lowers these crops' nutritional value." Describe the factual bases of each current policy that is currently being implemented and enforced by each Defendant that is attempting to prevent "decrease crop yield, increase crop prices, and decrease the concentrations of protein and essential minerals in



crops such as wheat and rice, which lowers these crops' nutritional value" as a result of climate change.

**Response to Interrogatory No. 48:**

The United States objects to the phrase "each current policy that is currently being implemented and enforced by each Defendant" as vague, ambiguous, and erroneous: Congress enacts statutes and confers enforcement authority for those statutes on federal agencies, which in turn promulgate regulations, develop and implement policies, and write guidance. The federal agencies enforce federal laws, not policies. The United States further objects that the term "policy" as used by Plaintiffs is vague and ambiguous. It is unclear whether Plaintiffs intend the term "policy" to refer only to publicly available, final written policies drafted by federal agencies in service of their enforcement authority or to something else. The United States also objects to this interrogatory as overly broad and unduly burdensome to the extent it ostensibly requests information concerning "each" agriculture policy implemented by the federal agencies.

Subject to, and without waiving, those objections, the United States provides the following response which it reserves the right to supplement and amend:

The USDA has implemented a number of crop programs designed to support U.S. agriculture, including efforts directed specifically at crop yields and crop prices. Some of these programs are described in further detail on fact sheets issued by the Farm Agency Service and Risk Management Agency, e.g., 2014 Farm Bill Fact Sheet; A Risk Management Agency Fact Sheet, About the Risk Management Agency (Revised August 2016); Commodity Credit Corporation Fact Sheet (October 2015); Farm Service Agency Fact Sheet (August 2016). The USDA conducts research on the effects of climate change on crop systems, including the effects on the nutritional value of crops. In 2015, USDA synthesized the science on climate change and

global food security in a report, Climate Change, Global Food Security, and the U.S. Food System.

DATED: October 7, 2018

Respectfully submitted,

JEFFREY H. WOOD

Acting Assistant Attorney General Environment &  
Natural Resources Division

/s/ Erika Norman

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)

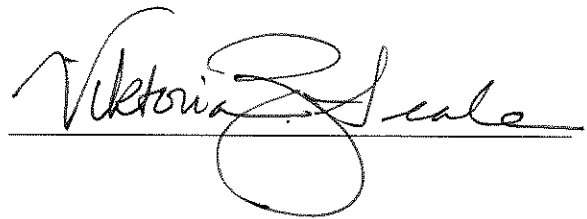
U.S. Department of Justice

**VERIFICATION OF INTERROGATORY RESPONSES**

I, Victoria Z. Seale, am General Counsel CEQ. I provided information to the Department of Justice in connection with the United States' Responses to Plaintiffs' First Set of Interrogatories on behalf of itself and the federal agencies named in this lawsuit. I certify that the information I provided to the Department of Justice is true and correct. I have reviewed these responses, and, to the extent they incorporate information I provided to the Department of Justice they are true and correct to the best of my knowledge, information, and belief.

I verify under penalty of perjury that the foregoing is true and correct.

Executed on October 5, 2018.

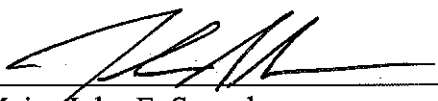
A handwritten signature in black ink, reading "Victoria Z. Seale", is written over a horizontal line. The signature is stylized with a large, looping "V" and a cursive "Seale".

**VERIFICATION OF INTERROGATORY RESPONSES**

I, Major John E. Swords, am a Litigation Attorney at the U.S. Army Litigation Division. The Department of Defense Office of the General Counsel delegated this case to our office, with their oversight. As such, our office is responsible for all aspects of this case related to the Department of Defense and its components. I provided information to the Department of Justice in connection with the United States' Responses to Plaintiffs' First Set of Interrogatories on behalf of itself and the federal agencies named in this lawsuit. I certify that the information I provided to the Department of Justice is true and correct. I have reviewed these responses, and, to the extent they incorporate information I provided to the Department of Justice they are true and correct to the best of my knowledge, information, and belief.

I verify under penalty of perjury that the foregoing is true and correct.

Executed on October 5, 2018.

  
\_\_\_\_\_  
Major John E. Swords

**VERIFICATION OF INTERROGATORY RESPONSES**

I, Matthew Rotman, am Trial Counsel at U.S. Department of Energy. I provided information to the Department of Justice in connection with the United States' Responses to Plaintiffs' First Set of Interrogatories on behalf of itself and the federal agencies named in this lawsuit. I certify that the information I provided to the Department of Justice is true and correct. I have reviewed these responses, and, to the extent they incorporate information I provided to the Department of Justice they are true and correct to the best of my knowledge, information, and belief.

I verify under penalty of perjury that the foregoing is true and correct.

Executed on October 5, 2018.

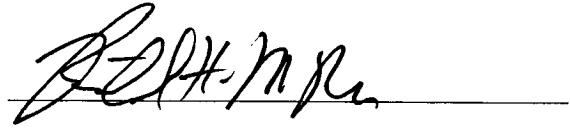
Matthew Rotman

**VERIFICATION OF INTERROGATORY RESPONSES**

I, Richard McNee, am Assistant Solicitor at Dept. of the Interior provided information to the Department of Justice in connection with the United States' Responses to Plaintiffs' First Set of Interrogatories on behalf of itself and the federal agencies named in this lawsuit. I certify that the information I provided to the Department of Justice is true and correct. I have reviewed these responses, and, to the extent they incorporate information I provided to the Department of Justice they are true and correct to the best of my knowledge, information, and belief.

I verify under penalty of perjury that the foregoing is true and correct.

Executed on October 5, 2018.

A handwritten signature in black ink, appearing to read "Richard McNee", is written over a horizontal line.

**VERIFICATION OF INTERROGATORY RESPONSES**

I, Joy K. Park, am a Senior Trial Attorney at the U.S. Department of Transportation. I provided information to the Department of Justice in connection with the United States' Responses to Plaintiffs' First Set of Interrogatories on behalf of itself and the federal agencies named in this lawsuit. I certify that the information I provided to the Department of Justice is true and correct. I have reviewed these responses, and, to the extent they incorporate information I provided to the Department of Justice they are true and correct to the best of my knowledge, information, and belief.

I verify under penalty of perjury that the foregoing is true and correct.

Executed on October 5, 2018.



**VERIFICATION OF INTERROGATORY RESPONSES**

I, Daniel Conrad, am an Attorney in the Office of General Counsel at the Environmental Protection Agency. I provided information to the Department of Justice in connection with the United States' Responses to Plaintiffs' First Set of Interrogatories on behalf of the United States and the federal agencies named in this lawsuit. I certify that the information I provided to the Department of Justice is true and correct to the best of my knowledge, information, and belief. I have reviewed these responses, and, to the extent they incorporate information I provided to the Department of Justice they are true and correct to the best of my knowledge, information, and belief.

I verify under penalty of perjury that the foregoing is true and correct.

Executed on October 7, 2018.

A handwritten signature in black ink, appearing to read "Daniel Conrad", is written over a horizontal line.



**VERIFICATION OF INTERROGATORY RESPONSES**

I, Andrew Neustaetter, am an Attorney-Adviser at the U.S. Department of State. I provided information to the Department of Justice in connection with the United States' Responses to Plaintiffs' First Set of Interrogatories on behalf of itself and the federal agencies named in this lawsuit. I certify that the information I provided to the Department of Justice is true and correct. I have reviewed these responses, and, to the extent they incorporate information I provided to the Department of Justice they are true and correct to the best of my knowledge, information, and belief.

I verify under penalty of perjury that the foregoing is true and correct.

Executed on October 5, 2018.

A handwritten signature in blue ink, appearing to read "Andrew Neustaetter", is written over a horizontal line.

**VERIFICATION OF INTERROGATORY RESPONSES**

I, Patrick Redmond Attorney-Advisor at USDA-OGC. I provided information to the Department of Justice in connection with the United States' Responses to Plaintiffs' First Set of Interrogatories on behalf of itself and the federal agencies named in this lawsuit. I certify that the information I provided to the Department of Justice is true and correct. I have reviewed these responses, and, to the extent they incorporate information I provided to the Department of Justice they are true and correct to the best of my knowledge, information, and belief.

I verify under penalty of perjury that the foregoing is true and correct.

Executed on October 5, 2018.

A handwritten signature in black ink, appearing to read "Patrick Redmond", is written over a horizontal line.

## **Exhibit 5**

**GREGORY LAW GROUP**  
**1250 Godetia Drive**  
**Redwood City, CA 94062-4163**  
**[pgregory@gregorylawgroup.com](mailto:pgregory@gregorylawgroup.com)**

October 14, 2018

**VIA EMAIL**

Sean C. Duffy  
Frank Singer  
Marissa Piropato  
Clare Boronow  
Erika Norman

**U.S. DEPARTMENT OF JUSTICE**  
**ENVIRONMENT & NATURAL RESOURCES DIVISION**

601 D Street NW  
Washington, DC 20004  
[sean.c.duffy@usdoj.gov](mailto:sean.c.duffy@usdoj.gov)  
[frank.singer@usdoj.gov](mailto:frank.singer@usdoj.gov)  
[Marissa.piropato@usdoj.gov](mailto:Marissa.piropato@usdoj.gov)  
[clare.boronow@usdoj.gov](mailto:clare.boronow@usdoj.gov)  
[Erika.Norman@usdoj.gov](mailto:Erika.Norman@usdoj.gov)

**Re: *Juliana v. United States*, 6:15-cv-01517-AA, Discovery Meet and Confer**

Dear Sean, Frank, Marissa, Clare, and Erika,

I wanted to confirm our discussion on Friday concerning: (a) Defendants' responses to Plaintiffs' Interrogatories; (b) Plaintiffs' responses to Defendants' Interrogatories; (c) Defendants' Motions *in Limine* re. expert issues; and (d) miscellaneous items.

(a) **Defendants' responses to Plaintiffs' Interrogatories:** Counsel for Plaintiffs reiterated that Defendants' responses fail to set forth complete answers as to any facts, witnesses, or documents. Counsel for Plaintiffs stated that such responses fail to comply with the Federal Rules. On the eve of trial, the purpose of contention interrogatories is to know what the party will present during trial so that the other party knows, before the Pre-Trial Conference, what evidence addresses what claim or defense. Thus, the parties met and conferred on the responses and Defendants refused to amend or supplement their responses except as indicated below.

Counsel for Defendants wanted to walk through each interrogatory to confer on whether they could answer them as an iterative process such that Plaintiffs would redraft each of the interrogatories. Given the short time frame before commencement of trial, Plaintiffs saw no value

October 14, 2018  
Page 2 of 4

in a further iterative process. Without any basis in fact, counsel for Defendants also claimed that Plaintiffs were meeting and conferring after Plaintiffs had drafted their motion to compel. Counsel for Defendants went so far as to accuse counsel for Plaintiffs of having drafted the motion to compel earlier in the week and having it ready to file before ever meeting and conferring. Counsel for Plaintiffs stated that accusation was false and declared to counsel for Defendants that such speculation was completely disrespectful and unprofessional.

Counsel for Defendants indicated that, as to Interrogatory No. 8, Defendants do not intend to introduce any documents. Counsel for Plaintiffs requested a supplemental response on this interrogatory. As to interrogatories requesting the identities of witnesses and documents, counsel for Defendants stated they will be serving the exhibit list and the witness list and wanted Plaintiffs to accept those lists in lieu of a supplemental response. Counsel for Plaintiffs replied that a witness or exhibit list was unacceptable as a supplemental response and Defendants needed to supplement their responses with the identities of witnesses and documents. Defendants did not take a position on whether they would so supplement.

(b) **Plaintiffs' responses to Defendants' Interrogatories:** Counsel for Defendants indicated they anticipate filing a motion to compel with respect to Plaintiffs' responses to Defendants' interrogatories but will not be prepared to meet and confer with respect to that motion until early next week. In response to Defendants' suggestion that the parties jointly file their respective motions to compel at some point next week, counsel for Plaintiffs stated they would proceed independently.

(c) **Defendants' Motions *in Limine* re. expert issues:** Earlier on Friday, Defendants indicated for the first time that they were anticipating filing three motions on Monday to exclude testimony by the following experts at trial:

- (1) Jefferson
- (2) Smith
- (3) Hansen
- (4) Hoegh-Guldberg
- (5) Rignot
- (6) Running

October 14, 2018  
Page 3 of 4

(7) Trenberth

(8) Wanless

Defendants also indicated that the experts listed as Nos. 3-8 above will be the subject of one motion. Defendants also stated these motions would not challenge the experts' qualifications.

During the call, counsel for Defendants could not state the basis for the motion to exclude climate scientists (the experts listed as Nos. 3-8) other than generally stating these experts are cumulative of the admissions in Defendants' Answer and, in part, of each other. Counsel could not articulate a single example of the cumulative nature of the experts' testimony. When asked if Defendants would stipulate to the facts and opinions in the expert reports of these climate scientists, counsel for Defendants would not agree to stipulate to any of those facts and opinions, claiming these expert reports are redundant of what Defendants have admitted, but "they are not exactly the same." Counsel for Defendants finally gave examples of redundancy: in their Answer, Defendants admit to sea level rise, admit to ocean acidification, and admit to temperature increase, therefore the Court does not need to hear from Drs. Hansen, Hoegh-Guldberg, Rignot, or Wanless. Counsel specifically stated the Court did not need to hear from Dr. Rignot for coral reefs.

As to Dr. Jefferson, Defendants will be filing a separate motion to strike her expert report, claiming her opinions are improper rebuttal testimony offering new opinions that were never before disclosed due to her opinions as to the four Plaintiffs. It supposedly is new testimony because Drs. Paulson and Pacheco never looked at the medical records or talked to the four Plaintiffs. Defendants also asserted her opinions are duplicative of Drs. Paulson and Pacheco. Defendants will move under Federal Rule 37(c) that her opinions not be allowed to be presented at trial.

As to Ms. Smith, Defendants will move to exclude her testimony because she allegedly is offering purely legal opinions and conclusions that are the province of the court and not proper expert testimony under Federal Rule 702.

Defendants were not able to state any additional grounds for any of these motions.

October 14, 2018  
Page 4 of 4

(d) **Miscellaneous items:**

1. **No other motions:** Counsel for Defendants stated Defendants will not be making any other Motions *in Limine*, except for a motion for judicial notice of documents in a separate process. They will meet and confer about those documents before making the motion.

2. **Pre-Trial Order:** Counsel for Defendants asserted it was a waste of time to file the Pre-Trial Order set forth in Local Rule 16.5, claiming: “Why bother with something that does not advance us in any way. Let’s go to trial.” Counsel for Defendants stated Defendants will make that same argument before Judge Aiken if Plaintiffs file the Pre-Trial Order. Plaintiffs indicated they believed a pre-trial order was appropriate in this case and would be filing their version on Monday.

Please get back to me if I have incorrectly written what was stated during our meet and confer session.

Regards,

/s/

**Philip L. Gregory**

cc: **Julia A. Olson**

**Andrea Rodgers**