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

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

Plaintiffs,

v.

UNITED STATES OF AMERICA, *et al.*,

Defendants.

**DEFENDANTS' RESPONSE TO  
PLAINTIFFS' MOTION TO COMPEL  
RESPONSES TO INTERROGATORIES**

### **Introduction**

The Court should deny Plaintiffs’ Motion to Compel, ECF No. 388 (“Mot.”), because Plaintiffs fail to tell the Court which of the sixty interrogatories they are moving on and why, with the only exception being the three interrogatories that Plaintiffs list as a “sample.” While Plaintiffs sometimes suggest they are moving with respect to all of their interrogatories (*see, e.g.*, Mot. at 6, 12), elsewhere Plaintiffs state that “Defendants provided wholly inadequate responses to *nearly all* interrogatories.” *Id.* at 11 (emphasis added). Plaintiffs do not identify the few responses they are satisfied with, thus leaving the Court—and Defendants—to surmise the limits of their motion. Plaintiffs’ failure to meet the most basic requirements of a motion to compel is fatal to their submission.

But even were the Court to overlook this shortcoming, Plaintiffs’ Motion must be denied because Defendants have provided satisfactory verified responses to Plaintiffs’ interrogatories where they were legally required to do so, and will be providing supplemental responses to six interrogatories. Specifically, Defendants provided verified responses to ten interrogatories, and Plaintiffs do not identify a single defect with any of these responses. Defendants rightfully object to thirty interrogatories seeking information about Defendants’ legal theories and dispositive arguments. Defendants also rightfully object to sixteen other interrogatories that rely on objectionable terms or are otherwise vague, ambiguous, or overly broad in scope. As to the remaining four interrogatories, Defendants will supplement their previous responses in an effort to assist the Court in resolving this Motion efficiently. Defendants are also supplementing two additional responses that Plaintiffs may or may not be moving on, pursuant to their duty under Rule 26(e).

### **Factual Background**

On August 16, 2018, the Parties appeared before the Magistrate for a status conference during which Plaintiffs asserted they intended to serve seventy “contention” interrogatories on each of the nine federal defendants for a total of 630 interrogatories. Ex. 1 to Norman Decl. in Support of Defs.’ Opp. to Pls.’ Mot. to Compel, filed concurrently herewith (“Norman Decl.”) (Aug. 16, 2018 Hr’g Tr. at 23:8-24:20). After some discussion with the Magistrate, Plaintiffs stated they would serve one set of interrogatories on the United States the next day, on August 17, 2018, as well as one set of interrogatories on each of the federal agency defendants. *Id.* at 27:14-18. The Court ordered Plaintiffs to “do that by tomorrow.” *Id.* at 27:20.

On August 17, 2018, Plaintiffs propounded sixty interrogatories on the United States. Norman Decl. ¶ 3. Plaintiffs did not propound any interrogatories on the nine federal agencies. Defendants reviewed the interrogatories and concluded that a number of them were objectionable. *Id.* ¶ 4. As to the others, Defendants began compiling responsive information from the relevant agencies in order to provide one response on behalf of the United States, but determined that additional time beyond the September 16, 2018 deadline would be necessary to complete that process. *Id.* On September 13, 2018, Defendants requested a three-week extension, until October 7, 2018, to respond to Plaintiffs’ sixty interrogatories. *Id.* ¶¶ 5-6; Ex. 2 to Norman Decl. (Sept. 13, 2018 email).

Plaintiffs initially responded that they would agree to the three-week extension “as long as Plaintiffs receive substantive responses to all 60 interrogatories,” Norman Decl. ¶ 6, to which Defendants replied unequivocally that they would respond to Plaintiffs interrogatories only to the extent required by the Federal Rules of Civil Procedure, and for that reason could not promise “substantive” responses to all sixty interrogatories. *Id.* ¶ 7. To address Plaintiffs’ expressed

concern that they would only receive objections on October 7, 2018, Defendants agreed to provide partial responses and objections to Plaintiffs' interrogatories by September 28, 2018, so that the Parties could begin the process of meeting and conferring regarding those objections in advance of Defendants providing their remaining verified responses on October 7, 2018. *Id.* ¶ 8; Ex. 3. to Norman Decl. (Sept. 16, 2018 email). Defendants also agreed to provide responses to the sixty interrogatories on behalf of the United States, thus obviating the need for Plaintiffs to serve additional sets of interrogatories on the individual federal agencies. Norman Decl. ¶ 8.

As promised, Defendants served their partial responses and objections on September 28, 2018. *Id.* ¶ 10; Ex. 5 to Norman Decl. (Defs.' Partial Resps.). Plaintiffs, however, did not immediately seek to meet and confer. Instead, Plaintiffs waited until October 10, 2018—nearly two weeks after Defendants served their partial responses and objections, and three days after Defendants served their remaining verified responses to Plaintiffs' first set of interrogatories. Norman Decl. ¶ 11; Ex. 6 to Norman Decl. (Oct. 7, 2018 Resp.); *see also* Norman Decl. ¶ 12.

The parties met and conferred on October 12, 2018. Norman Decl. ¶ 13. As Plaintiffs note, Defendants suggested at the time that the parties efficiently go through each interrogatory and corresponding objections—as is typical in litigation—to see whether Plaintiffs' motion to compel could be narrowed in advance of filing. *Id.* For example, Defendants did not understand—and still do not understand—why Plaintiffs would move to compel on interrogatories to which Defendants provided verified responses at considerable burden to the federal agencies. Plaintiffs' counsel declined Defendants' invitation; citing the impending trial, Plaintiffs took the position that it was imperative to get their motion on file “today.” *Id.* Plaintiffs filed their Motion five days later, on October 17, 2018 (Mot., ECF No. 388).



## Argument

### **I. Plaintiffs’ Motion Must Be Denied Outright, Because Plaintiffs Fail to Comply With Local Rule 37-1.**

Local Rule 37-1 provides that “Motions for an order compelling an answer . . . must provide only the pertinent interrogatory . . . , including any pertinent responses and/or objections, together with the legal arguments of the party.” Plaintiffs’ Motion to Compel does not comply with this Rule, because Plaintiffs do not inform the Court (or Defendants, for that matter) which of the sixty interrogatories they are moving on and why, with the only exception being the three interrogatories that Plaintiffs list as a “sample.” *See* Mot. at 8-9. Although in certain places Plaintiffs suggest they are moving on *all* of their interrogatories (*see, e.g., id.* at 6, 12), Plaintiffs also state that “Defendants provided wholly inadequate responses to *nearly all* interrogatories.” *Id.* at 11. Plaintiffs never go on to explain which of Defendants’ responses *were* adequate in Plaintiffs’ view, leaving the Court to guess. Plaintiffs’ complete lack of specificity violates Local Rule 37-1 and is grounds for denying their motion. *See LTM, Inc. v. Avista Corp.*, No. 1:13-CV-726-PA, 2014 WL 12774921, at \*1 (D. Or. Jan. 23, 2014) (finding that movant’s failure to comply with Local Rule 37-1 was sufficient grounds for denying a motion to compel).

### **II. Plaintiffs’ Motion to Compel Should Be Denied Where Plaintiffs’ Seek Information About Trial Exhibits and Witnesses.**

Plaintiffs devote much of their argument to Defendants’ responses to interrogatories requesting information about trial exhibits and witnesses, to which Defendants ostensibly responded only that the interrogatories were premature. *See* Mot. at 10-12. Defendants provided a verified response to one such interrogatory (*see infra* Part III), and informed Plaintiffs during the meet and confer that they would provide a supplemental response to Interrogatory No. 8. Plaintiffs overlook that in all but three of the other cases—Interrogatory Nos. 2, 3, and 39—

Defendants rightfully object to Plaintiffs' interrogatories about trial exhibits and witnesses for reasons other than prematurity, *i.e.*, because the interrogatories seek information about Defendants' legal theories and dispositive arguments (Nos. 5-6, 8-9, 11-12, 15-16, 19-20, 22-23, 25-26, 29-30, 32-33, 41-42), or because the interrogatories are otherwise objectionable (Nos. 35-36, 50-51, 53-54, 56-60). Defendants had no legal obligation to answer these interrogatories beyond stating their objections (*see infra* Parts IV-V), and are under no obligation to supplement their responses.

Plaintiffs' Motion to Compel should also be denied as to Interrogatory Nos. 2, 3, and 39, which seek information about exhibits and defense witnesses who may testify at trial. On October 15, 2018—one business day after the Parties met and conferred regarding the Motion to Compel—Defendants filed a descriptive witness list (ECF No. 373) that included the identity of every witness Defendants may call at trial and a description of each witness's testimony. And on October 19, 2018, two days after Plaintiffs filed the instant Motion, Defendants filed their exhibit list (ECF No. 396) after having provided a copy to Plaintiffs a week before on October 12. Because Plaintiffs no longer lack the information sought by these interrogatories, their Motion should be denied. Nevertheless, in an effort to assist the Court in resolving Plaintiffs' Motion, Defendants will provide supplemental responses to Interrogatory Nos. 2, 3, and 39 within five business days of filing this Response.

### **III. Plaintiffs' Motion Must Be Denied Where Defendants Have Provided Verified Responses And Plaintiffs Do Not Challenge Defendants' Answers – Interrogatory Nos. 14, 18, 28, 37-38, 43, 45-48.**

Defendants provided verified responses to ten interrogatories (Nos. 14, 18, 28, 37-38, 43, and 45-48) following a reasonable inquiry of the pertinent federal agencies and have answered these interrogatories as fully as the available information will allow. Nothing more is required

under the Federal Rules. Further, Plaintiffs fail to identify even a single defect with any of Defendants’ ten verified responses, and it is unclear from Plaintiffs’ Motion whether any of them are in fact included in the “nearly all” interrogatories Plaintiffs claim to be moving on. This illustrates how Plaintiffs’ complete failure to comply with Local Rule 37-1 has introduced unnecessary confusion into this process, and provides further justification to deny the Motion.

Accordingly, Plaintiffs’ Motion to Compel must be denied as to Interrogatory Nos. 14, 18, 28, 37-38, 43, and 45-48.

**IV. Plaintiffs’ Motion to Compel Must Be Denied Where Plaintiffs Seek Information About Defendants’ Legal Theories and Motion Arguments – Interrogatory Nos. 4-13, 15-17, 19-27, 29-33, 40-42.**

Plaintiffs propound thirty interrogatories seeking more information about Defendants’ legal theories and dispositive motion arguments:

- Interrogatory Nos. 4-6 seek information about Defendants’ argument that Plaintiffs’ requested relief “contains an improper collateral attack on agency actions . . . , which is prohibited by the Administrative Procedure Act” (APA);
- Interrogatory Nos. 7-9 seek information about Defendants’ argument that “Plaintiffs failed to exhaust their administrative remedies”;
- Interrogatory Nos. 10-12 seek information about Defendants’ argument that Plaintiffs’ “claims are displaced by the Clean Air Act”;
- Interrogatory Nos. 13, 15, and 16 seek information about Defendants’ arguments that Plaintiffs’ relief would “effective[ly] repeal” numerous federal statutes;
- Interrogatory Nos. 17, 19, and 20 seek information about Defendants’ arguments that Plaintiffs’ relief would “effective[ly] vacat[e]” numerous federal regulations;

- Interrogatory Nos. 21-23 seek information about Defendants’ arguments that Plaintiffs’ relief “is barred by Article I” of the Constitution;
- Interrogatory Nos. 24-26 seek information about Defendants’ arguments that Plaintiffs’ relief “is barred by Article II” of the Constitution;
- Interrogatory Nos. 27, 29, and 30 seek information about Defendants’ arguments that Plaintiffs’ relief “is barred by international agreements”;
- Interrogatory Nos. 31-33 seek information about Defendants’ arguments that Plaintiffs’ relief is “barred by separation of powers principles”;
- Interrogatory Nos. 40-42 seek information about Defendants’ assertion that “the State Department is not charged with regulating petroleum products . . . .”

Each of those interrogatories is improper because a defendant’s legal theories and dispositive arguments are not the proper subjects of interrogatories. *See A.G. v. Or. Dep’t of Human Servs.*, No. 3:13-cv-1051-AC, 2015 WL 1548919, at \*2 (D. Or. Apr. 7, 2015) (refusing to compel responses to interrogatories seeking information about defendants’ “legal theories” and “motion arguments”).

In contrast to asking about facts or requiring Defendants to apply the law to specific facts, the aforementioned interrogatories seek information concerning Defendants’ legal theories as to why this lawsuit must be dismissed, specifically that Plaintiffs have failed to state a claim under the APA (Nos. 4-12) and that their claims are foreclosed by separation of powers principles (Nos. 13, 15-17, 19-27, 29-33). Interrogatory Nos. 40-42 relate to an issue of pure law unrelated to the facts of this case, *i.e.*, whether the State Department is charged with regulating petroleum products, and are therefore also objectionable under Rule 33 and Rule 26(b), because Plaintiffs do not seek information regarding a matter “that is relevant to [their] claim or defense.”

But even to the extent any of the aforementioned interrogatories are properly formed (and Defendants aver they are not) Plaintiffs are swimming in this information: Defendants’ theories and arguments for why this case should be dismissed are set forth in great detail in a number of filings before this Court. *See, e.g.*, Defs.’ Mot. for J. on the Pleadings (ECF No. 195); Defs.’ Mot. for Summ. J. (ECF No. 207); Defs.’ Trial Mem. (ECF No. 378). Plaintiffs do not suffer from a lack of information, nor do they claim any prejudice here.

Accordingly, Plaintiffs’ Motion to Compel must also be denied as to Interrogatory Nos. 4-7, 10-13, 15-17, 19-27, 29-33, and 40-42.

**V. Plaintiffs’ Motion to Compel Must Be Denied Where The Interrogatories Are Otherwise Objectionable – Interrogatory Nos. 34-36, 44, 49-60.**

Plaintiffs also propound a number of interrogatories that are objectionable because they rely on objectionable terms or are otherwise vague, ambiguous, or overbroad in scope. Defendants had no legal obligation to respond to these interrogatories beyond their stated objections. Plaintiffs, moreover, declined Defendants’ invitation to address Defendants’ specific concerns with each interrogatory during the Parties’ meet and confer, which could have presented an opportunity for further explanation or refinement on Plaintiffs’ part, before filing the present motion.

Interrogatory Nos. 34-36 seek information about Defendants’ denial that they have “continued a policy or practice of allowing the *exploitation* of fossil fuels” (emphasis added). Defendants rightfully objected to these interrogatories because the term “exploitation” is vague, ambiguous, subjective, and inflammatory.

Interrogatory No. 44 seeks information about Defendants’ plans and policies “that are currently intended to preserve a *habitable climate system*” (emphasis added). Defendants also rightfully objected to this interrogatory because the phrase coined by Plaintiffs – “habitable

climate system”—is vague, ambiguous, the subject of ongoing scientific debate, and reasonable experts would disagree as to its meaning.

Interrogatory Nos. 49-51 seek information about the “*scientific standard*” that current actions by Federal Defendants are based on (emphasis added). Defendants objected to these interrogatories because they rely on the term “scientific standard,” which is vague, ambiguous, and subject to differing interpretations. Further, these interrogatories seek information about “actions by Federal Defendants,” without any limitation as to subject matter, agency, or time period.

Interrogatory Nos. 52-57 rely on Plaintiffs’ defined term “dangerous anthropogenic interference with the climate system.” Defendants objected to all of these interrogatories, because Plaintiffs’ definition is vague, ambiguous, overly broad, and easily susceptible to more than one meaning. Further, Plaintiffs’ definition of “dangerous anthropogenic interference with the climate system” is not a definition at all, but a list other vague, ambiguous, and subjective terms, such as “large global warming,” “the worst impacts of climate change,” and “unacceptable concentration of greenhouse gases.” Taking just these three examples, the words “large,” “worst” and “unacceptable” are imprecise and highly subjective. Accordingly, Defendants could not reasonably formulate any response to Interrogatories Nos. 52-57.

Interrogatory Nos. 58-60 seek information concerning the evidence Defendants will put on at trial related to “Plaintiffs’ Claims for Relief.” These interrogatories are so overly broad as to be pointless: *All* evidence Defendants will put on at trial is related to “Plaintiffs’ Claims for Relief,” which Defendants interpret to mean each and every allegation in the First Amended Complaint.

**VI. Plaintiffs' Motion to Compel Must Be Denied Where Defendants Will Provide Supplemental Responses – Interrogatory Nos. 1-3, 8, 39, and 46.**

Plaintiffs' Motion to Compel identifies *only three* interrogatory responses by number that they claim are legally deficient: Nos. 1-3. Mot. at 8-9. Although Plaintiffs assert that these responses are but “a sample” of Defendants' improper responses, Plaintiffs leave the Court (and Defendants) to guess for which of the remaining fifty-seven interrogatory responses Plaintiffs claim judicial intervention is required. Plaintiffs' interrogatories are not all alike and Defendants have objected to different interrogatories for different reasons. A finding that Defendants' responses to Interrogatory Nos. 1-3 were insufficient would not translate into a finding that *all* of Defendants' responses were insufficient. This reality no doubt underlies the requirements of Local Rule 37-1 that “Motions for an order compelling an answer . . . must provide only the pertinent interrogatory . . . , including any pertinent responses and/or objections, together with the legal arguments of the party.” If Plaintiffs have met those requirements at all, they have done so only with respect to Interrogatory Nos. 1-3.

In an effort to assist the Court in resolving Plaintiffs' Motion to Compel in a prompt and efficient manner, Defendants will agree to provide supplemental responses to Interrogatory No. 1, in addition to Interrogatory Nos. 2-3, 8, and 39 (*see supra* Part II). Defendants will also provide a supplemental response to Interrogatory No. 46, pursuant to their duty under Rule 26(e). Defendants will provide these responses to Plaintiffs within five business days of filing this Response.

**Conclusion**

Based on the foregoing, Plaintiffs' Motion to Compel should be denied in its entirety. Plaintiffs do not challenge Defendants' verified responses where verified responses were provided and Defendants' objections to the remaining interrogatories should be sustained for the

reasons described herein. Further, in an effort to assist the Court in promptly and efficiently resolving Plaintiffs' Motion, Defendants have agreed to provide supplemental responses to the *only* three interrogatory responses Plaintiffs' specifically challenge in their Motion (Nos. 1-3), as well as to Interrogatory Nos. 8, 39, and 46 within five business days of the filing of this Response.

Dated: November 16, 2018

Respectfully submitted,

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U.S. Department of Justice

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

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

Plaintiffs,

v.

UNITED STATES OF AMERICA, *et al.*,

Defendants.

**DECLARATION OF ERIKA NORMAN  
IN SUPPORT OF DEFENDANTS'  
RESPONSE TO PLAINTIFFS'  
MOTION TO COMPEL RESPONSES  
TO INTERROGATORIES**

I, Erika Norman, do declare and if called upon would testify as follows:

1. I am a Trial Attorney at the United States Department of Justice and an attorney of record for Defendants in the above-entitled action. I have personal knowledge of the statements made herein.
2. On August 16, 2018, counsel for Plaintiffs and Defendants, including myself, appeared before the Magistrate for a status conference where Plaintiffs asserted they intended to serve seventy “contention” interrogatories on each of the nine federal defendants for a total of 630 interrogatories. The Magistrate ordered them to do so the following day. A true and correct copy of the transcript of the August 16, 2018 hearing is attached hereto as Exhibit 1.
3. On August 17, 2018, Plaintiffs propounded sixty interrogatories on the United States. Plaintiffs did not propound any interrogatories on the nine federal agencies.
4. Defendants reviewed the interrogatories and concluded that a number of them were likely objectionable. As to the others, Defendants believed that they could undertake gathering responsive information from the relevant agencies in order to provide one response on behalf of the United States, but would require additional time beyond the September 16, 2018 deadline to complete that process.
5. On September 13, 2018, I emailed Plaintiffs’ counsel requesting a three-week extension, until October 7, 2018, for Defendants to respond to Plaintiffs’ sixty interrogatories.
6. Counsel for Plaintiffs responded by email the next day that they would agree to the three-week extension “as long as Plaintiffs receive substantive responses to all 60 interrogatories.” Counsel for Plaintiffs also asked that Defendants “stipulate to the 60

- interrogatories” where the Federal Rules allow for only twenty-five interrogatories, and confirm that Defendants would respond to all sixty interrogatories on behalf of the United States. A true and correct copy of Defendants’ September 13 email and Plaintiffs’ response is attached hereto as Exhibit 2.
7. Counsel for Plaintiffs and Defendants later met and conferred by telephone on September 14, 2018. During that telephone call, I stated unequivocally that Defendants would respond to Plaintiffs interrogatories to the extent required by the Federal Rules of Civil Procedure and to that end could not promise “substantive” responses to all sixty interrogatories. Plaintiffs’ counsel expressed concern that Plaintiffs would only receive objections on October 7, 2018 and so was hesitant to agree to a three-week extension.
8. In an effort to resolve the issue, Defendants offered by email on September 16, 2018 to provide Plaintiffs with partial responses and objections to Plaintiffs’ interrogatories by September 28, 2018 so that the Parties could begin the process of meeting and conferring regarding Defendants’ objections in advance Defendants providing their remaining verified responses on October 7, 2018. Defendants also stated that they would provide responses to the sixty interrogatories on behalf of the United States, thus obviating the need for Plaintiffs to serve additional sets of interrogatories on the individual federal agencies. A true and correct copy of the September 16, 2018 email is attached hereto as Exhibit 3.
9. On September 18, 2018, Plaintiffs responded and suggested that the parties meet and confer regarding Defendants’ objections on September 20, 2018. Counsel for Defendants replied that Defendants would not have responses to objectionable

- interrogatories prepared within the two-day timeframe Plaintiffs proposed, but would be prepared to serve partial objections and responses the following week and meet and confer thereafter. A true and correct copy of Plaintiffs' September 18, 2018 response and Defendants' reply is attached hereto as Exhibit 4.
10. Defendants then proceeded to prepare partial responses and objections to Plaintiffs' interrogatories, which they served on September 28, 2018. A true and correct copy of Defendants' partial responses is attached hereto as Exhibit 5.
11. Plaintiffs did not reach out to meet and confer on Defendants' partial responses and objections and on October 7, 2018, Defendants served their remaining verified responses to Plaintiffs' first set of interrogatories. A true and correct copy of Defendants responses served on October 7, 2018 is attached hereto as Exhibit 6.
12. It was not until October 10, 2018, nearly two weeks after Defendants served their partial responses and objections that Plaintiffs reached out to meet and confer regarding Defendants' interrogatory responses.
13. The parties met and conferred on October 12, 2018. Plaintiffs are correct that counsel for Defendants suggested that the parties efficiently go through each interrogatory as is typical in litigation to see whether Plaintiffs' motion to compel could be narrowed in advance of filing. Plaintiffs' counsel declined Defendants' request to briefly discuss each interrogatory before filing their motion, citing concerns about there not being much time left before trial and needing to get their motion on file "today."
14. Plaintiffs' filed their Motion five days later, on October 17, 2018 (ECF No. 388).

I declare under penalty of perjury under the laws of the District of Columbia and the United States that the foregoing is true and correct and was executed this 15th day of November, 2018 at Kensington, MD.

/s/ Erika Norman

# **EXHIBIT 1**

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF OREGON

3 THE HON. THOMAS M. COFFIN, JUDGE PRESIDING

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6 KELSEY CASCADIA ROSE JULIANA, et )  
al., )

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8 Plaintiffs, )

9 v. )

No. 6:15-cv-01517-TC

10 UNITED STATES OF AMERICA, et al., )

11 Defendants. )  
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14 REPORTER'S TRANSCRIPT OF PROCEEDINGS

15 EUGENE, OREGON

16 THURSDAY, AUGUST 16, 2018

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## PROCEEDINGS

THURSDAY, AUGUST 16, 2018

THE CLERK: Please be seated.

Now is the time set for Civil Case No. 15-1517,  
Juliana, et al. versus United States of America, et al., for  
status conference.

THE COURT: Okay. Good morning everyone.

THE ATTORNEYS: Good morning, Your Honor.

THE COURT: I was driving to the courthouse when  
you filed the joint status report, and probably not a good  
idea for me to try to read it on my iPhone while I am  
driving. So I have taken the time -- excuse the delay in  
taking the bench, but I had to read this before I took the  
bench.

So having read the joint status report, I know you  
folks have been working hard. I will hear from plaintiffs'  
counsel first and take it from there.

MS. OLSON: Thank you, Your Honor. Good morning.  
And I apologize for the late filing of the joint status  
report.

THE COURT: That's okay.

MS. OLSON: We did have a productive  
meet-and-confer session yesterday with counsel regarding  
scheduling, and that is reflected in the joint status report  
and the calendar that we filed.

15:19:55 1           However, we still have some scheduling issues,  
2 both with respect to expert depositions and plaintiff  
3 depositions that I'd like to walk through and have a  
4 proposal regarding.

5           THE COURT: Okay.

6           MS. OLSON: Right now with respect -- with respect  
7 to expert depositions, defendants have provided expert  
8 reports for eight experts, and we have successfully  
9 scheduled four of those depositions. We have also --

10          THE COURT: I remember last time they didn't know  
11 whether they'd have eight or maybe ten. So it's eight  
12 experts.

13          MS. OLSON: It's eight experts.

14          THE COURT: Okay.

15          MS. OLSON: And for the other four, counsel for  
16 defendants need to confer with their experts to confirm  
17 availability on particular dates that we proposed as  
18 options.

19               And similarly, there are a few of plaintiffs'  
20 experts for whom we have not confirmed dates for depositions  
21 who we have reached out to and are also trying to either  
22 confirm dates that we have proposed with counsel or to  
23 provide alternate dates based on their availability.

24               And so what we would ask is that the court order  
25 plaintiffs and defendants by Monday close of business to

15:20:17 1 either confirm the dates that we have proposed in our  
2 schedule that they will work or to provide all available  
3 dates for depositions through the end of September for those  
4 experts.

5 So we would do that, and we would ask that  
6 defendants do that as well by the end of Monday.

7 THE COURT: By the end of Monday meet and confer  
8 and see if you can work out a schedule?

9 MS. OLSON: Right. Well, we need confirmation as  
10 to whether the dates that are already proposed will work,  
11 and if they won't work, we need to know the experts'  
12 availability for the rest of August and then through  
13 September.

14 One problem we have had in trying to confer and  
15 nail down a schedule is that the defendants have not known  
16 their experts' schedules for September, and that's  
17 important. So we would just like everyone to come to the  
18 table by the end of Monday with those dates.

19 THE COURT: Can you do that?

20 MS. PIROPATO: Your Honor, we think a court order  
21 is wholly unnecessary.

22 THE COURT: You what?

23 MS. PIROPATO: We think a court order is wholly  
24 unnecessary.

25 THE COURT: I hope so. That's why I want you to

15:20:39 1 work it out.

2 MS. PIROPATO: We'll work it out. The only caveat  
3 that we have -- we'll do our best, but one of our experts is  
4 out of the country, and, as we let plaintiffs know, we have  
5 been unable to reach them.

6 THE COURT: Okay.

7 MS. PIROPATO: So we will endeavor. We can't  
8 guarantee by the end of the close of business Monday, but we  
9 will endeavor.

10 THE COURT: Well, do your best, and whatever is  
11 unable to be worked out, you can come back to the court if  
12 you can't work it out.

13 And I forewarn everybody, you don't want me to  
14 pick the dates and order you to take the depositions on the  
15 schedule I set when you can work it out yourselves because  
16 somebody is going to be unhappy. Maybe everybody is going  
17 to be unhappy.

18 MS. OLSON: We agree, Your Honor. It's a  
19 complicated schedule with potentially 48 depositions.

20 THE COURT: I know that, and it hasn't been helped  
21 by the government's position on discovery, you know, during  
22 the period of time when the government was of the mind-set  
23 they were going to strategically not engage in discovery.  
24 So I am mindful of that too.

25 MS. OLSON: Thank you, Your Honor.

15:21:01 1 So I think that's it with respect to  
2 expert depositions and experts who are already identified.

3 And then there's also the issue as to rebuttal  
4 experts. And we propose that rebuttal expert depositions  
5 take place between October 8th and 19th and --

6 THE COURT: October 8th and 19th. Okay.

7 MS. OLSON: -- for depositions and that, based on  
8 the fact, that the parties had agreed that plaintiffs'  
9 rebuttal expert reports could be served on September 19th,  
10 which is one week later than Your Honor originally set for  
11 the rebuttal expert reports, and in part that's based on the  
12 expert deposition schedule being pushed back well into  
13 September.

14 So two things: One, that our rebuttal expert  
15 reports would be due on September 19th, which is a shift.

16 THE COURT: So one week later --

17 MS. OLSON: One week later.

18 THE COURT: -- than the schedule.

19 MS. OLSON: And then --

20 THE COURT: Let me stop you there.

21 MS. OLSON: Okay.

22 MS. PIROPATO: We do not oppose plaintiffs' expert  
23 reports being served on us September 19th, Your Honor.

24 THE COURT: Okay.

25 MS. OLSON: Thank you.

15:21:21 1 And then during those two weeks of October 8th to  
2 19th, that we would reserve those weeks for rebuttal expert  
3 depositions, if any are needed, and we would meet and confer  
4 to come up with a schedule for that.

5 THE COURT: Would that be agreeable?

6 MS. PIROPATO: Your Honor, I don't think the court  
7 needs to order us to meet and confer and for the parties to  
8 work out a schedule in the last two weeks of October.

9 THE COURT: I would be happy if you can work it  
10 out.

11 MS. PIROPATO: I think we should work it out. We  
12 have not seen the expert reports -- the rebuttal reports  
13 plaintiffs are discussing. We are cognizant trial is going  
14 to begin October 29th. We are cognizant that there's a  
15 short window.

16 We will meet and confer as soon as we get the  
17 reports, and as far as I know, I am not sure whether all of  
18 plaintiffs' experts are going to be filing surrebuttals, so  
19 I think we should start there, and then we'll have the  
20 discussion once we have a sense of what's on the table.

21 THE COURT: Okay. In our little corner of the  
22 legal universe here in the District of Oregon, we encourage  
23 the parties to get along and work things out as much as they  
24 can and not bother us, if they can avoid it, to issue  
25 orders.

15:21:44 1 But if they can't do that, then we will issue the  
2 orders and just make them happen. But you are far better  
3 off, because you know your schedules better than I do, in  
4 working it out.

5 So can you do all this by Monday because you were  
6 asking for Monday as another basically, you know, due date  
7 to have depositions scheduled? So would this fit into that  
8 category?

9 MS. PIROPATO: I think it's premature to discuss  
10 the deposition schedules for the surrebuttals when  
11 plaintiffs haven't even told us who is submitting a  
12 surrebuttal. We don't know what the surrebuttals are.

13 We will, as we said, endeavor to work with  
14 plaintiffs once they have disclosed that to us, but it does  
15 seem that this is premature at this point.

16 And we are mindful of what Your Honor says. We do  
17 not believe it's appropriate for this court to be refereeing  
18 setting the deposition schedules. This is something that we  
19 have been doing a pretty good job of working out amongst  
20 ourselves. I have no reason to think we won't continue to  
21 do so.

22 THE COURT: No reason to believe that you won't  
23 continue to do so?

24 MS. PIROPATO: We are going to get along on this.  
25 This is not something we should be fighting about.



15:22:07 1 Let me be clear. I shouldn't have done the double  
2 negative, Your Honor, but we will work it out.

3 THE COURT: Okay. Double negatives can -- yes,  
4 they are --

5 MS. PIROPATO: Not a good idea.

6 MR. DUFFY: Yeah. The bottom line is we don't  
7 think that we need to set any hard-and-fast schedule for the  
8 parties to confer about depositions that are still two  
9 months out.

10 THE COURT: Okay. Well, good. Just come back to  
11 me if you can't work it out.

12 MS. PIROPATO: Thank you, Your Honor.

13 MS. OLSON: Thank you, Your Honor.

14 So moving on to plaintiffs' depositions, which is,  
15 I think, a place where there's more disagreement, it's  
16 plaintiffs' position, consistent with Your Honor's  
17 statements at our last two status conferences, that the  
18 defendants waive their right to take the plaintiffs'  
19 depositions because they did not do so during the weeks  
20 offered and early on agreed upon by the parties.

21 However, when we received the notices of  
22 deposition to all 21 plaintiffs, which was also accompanied  
23 by subpoenas for production of documents, including medical  
24 records, we immediately asked the plaintiffs to prepare and  
25 produce those medical records and other relevant, responsive

15:22:29 1 documents. And so we are in the process of gathering those  
2 so that we can serve those on defendants.

3 And we asked the plaintiffs if they could make  
4 themselves available for an additional week, which is next  
5 week, even though that wasn't originally what we had agreed  
6 upon in our meet-and-confer sessions.

7 And so what the parties have agreed upon is that  
8 the ten plaintiffs who live in Oregon and Washington will  
9 sit for depositions on Monday, Tuesday, and Wednesday of  
10 next week. And those depositions will be limited to two  
11 hours. And they will produce and will serve the documents  
12 that are responsive as soon as we can on a rolling basis  
13 and, ideally, prior to the depositions occurring.

14 So we have agreement on that.

15 THE COURT: Okay.

16 MS. OLSON: However, there are 11 other  
17 plaintiffs. And plaintiffs --

18 MR. DUFFY: Can I interject on this before we move  
19 on?

20 With respect to the two hours, that's not exactly  
21 what we agreed to. We have agreed that these depositions  
22 are only going to go to standing. There's a limited number  
23 of issues. We are going to have a limited number of  
24 questions, and we are going to try to keep them as short as  
25 possible.

15:22:53 1 But the plaintiffs are going to be answering the  
2 questions, and we are going to need them to answer our  
3 questions, and if they do, we very well could keep these to  
4 two hours and that's a goal, but we haven't agreed to set a  
5 clock and where the time runs out after two hours because  
6 the federal rules don't require that.

7 THE COURT: Okay.

8 MS. OLSON: Your Honor, that's inconsistent with  
9 our understanding, and having our plaintiffs sit for  
10 depositions next week in three days where we are doing four  
11 plaintiffs in one day, three plaintiffs in each of the  
12 following two days, that those depositions be held to two  
13 hours given the delay and the changing strategy of  
14 defendants, the fact that they have prejudiced us in having  
15 to do all of these depositions now in a very short time  
16 frame.

17 We did discuss this and I thought we had agreement  
18 yesterday on this.

19 THE COURT: Well, having been a trial attorney for  
20 many years myself, one of the key attributes of what a  
21 trial lawyer -- a trial attorney brings to the table is  
22 flexibility. And so to try and put an exact time frame on  
23 an attorney's questioning of a witness, it's good to have it  
24 as a goal, but on the other hand, I recognize that the  
25 flexibility demands some leeway.

15:23:18 1 So I understand what Mr. Duffy has said. It's  
2 good to have as a goal the objective of keeping the  
3 depositions within two hours, but I understand that it may  
4 run over. Some of them may take less time than that. If  
5 so, you don't need to fill up all two hours. If you are  
6 happy with what you have gotten out of the witness in an  
7 hour and a half, finish and try and save time that way.

8 So I am not going to set a hardcore two-hour time  
9 limit on each plaintiff, but I do think everybody should  
10 have that in mind as an objective and be reasonable.

11 MS. OLSON: That's fine, Your Honor. There's one  
12 issue with that in that some of the plaintiffs, I believe,  
13 have work obligations and will need to leave at certain  
14 times. So we'll make that clear to counsel when those  
15 limitations arise in advance of the deposition so they can  
16 be mindful of those time lines.

17 THE COURT: Everybody should be reasonable and try  
18 and accommodate each other. Okay?

19 MS. PIROPATO: Thank you, Your Honor.

20 MR. DUFFY: We will be flexible.

21 THE COURT: All right.

22 MS. OLSON: Your Honor, with respect to the other  
23 11 plaintiffs who are not available this coming week and who  
24 are going to be resuming school, we have agreed that for  
25 plaintiffs who live in areas where experts are being deposed

15:23:44 1 that if we can combine a plaintiff deposition with an expert  
2 deposition and the plaintiff is available that we will  
3 schedule those depositions. And we will try to accommodate  
4 as many of those plaintiffs' depositions as we can.

5 But there may be some plaintiffs who are simply  
6 unavailable at times that would work for counsel given the  
7 expert deposition schedule.

8 And for those plaintiffs, it's our position that  
9 defendants have waived their right to take those  
10 depositions, but we are doing our best to try to make it  
11 happen.

12 THE COURT: It kind of sounds like it fits into  
13 the same category of flexibility and reasonableness that I  
14 just talked about.

15 Can you do that?

16 MR. DUFFY: Well, to be clear, in our discussions  
17 so far, the plaintiffs have offered four such witnesses in  
18 addition to the ten in Eugene next week.

19 THE COURT: So that leaves -- that's four out of  
20 the 11. So that leaves seven, then?

21 MR. DUFFY: That leaves seven. And in our  
22 discussions so far, they have taken the position that with  
23 respect to five of those plaintiffs, they would fly them  
24 into Eugene if we would pay for it. We can't do that.

25 But what we have offered -- and with respect to

15:24:07 1 two of those, they have taken the position that they are  
2 unavailable for deposition.

3 Our view is we have ten weeks. We are willing to  
4 do those depositions when and where those plaintiffs are  
5 available, and we intend to do all 21 depositions.

6 THE COURT: When you say you are willing to do  
7 them when and where they are available, you are talking  
8 about going to where they are going to school or --

9 MR. DUFFY: That's correct.

10 THE COURT: -- where they happen to be living.  
11 Okay.

12 MR. DUFFY: Yes.

13 THE COURT: You you are willing to do that?

14 MR. DUFFY: Yes. And I think in addition to that,  
15 I think of those seven, we could probably identify a few  
16 more who are within a reasonable distance of where we are  
17 doing an expert deposition, and we would ask them to have  
18 those plaintiffs come in in connection -- in the same time  
19 frame as the expert deposition.

20 And to give you an example, we had a discussion  
21 yesterday, and one of the plaintiffs is in school in  
22 Carlisle, Pennsylvania. That's about 110 miles from  
23 Washington, D.C. where we are going to be conducting  
24 depositions.

25 So I think in the spirit of flexibility, I think

15:24:29 1 the parties can figure out a way in that example to either  
2 go to Carlisle or have the plaintiff come to Washington,  
3 D.C. and we'll do the deposition.

4 And I think we can apply that principle to every  
5 one of these plaintiffs.

6 THE COURT: Your response?

7 MS. OLSON: Your Honor, we will do our best to try  
8 to coordinate with the plaintiffs' schedules, with counsel  
9 for plaintiffs' schedules and the expert deposition  
10 schedules and try to make them happen.

11 There may be some that will be too difficult to  
12 schedule and will prejudice plaintiffs' preparation of their  
13 case for trial and their ability to take all of the expert  
14 depositions.

15 THE COURT: Okay.

16 MR. DUFFY: Well, we have -- okay. I just want to  
17 note, though, we have served the notices of depositions. We  
18 have also served subpoenas.

19 So under the federal rules, the next step is for  
20 plaintiffs to offer a specific reason -- to either file for  
21 a motion for a protective order or motion to quash and  
22 provide us with specific reasons why an individual plaintiff  
23 is unavailable for deposition.

24 THE COURT: Well, but you are forgetting that at a  
25 certain stage in this case you basically rejected the idea

15:24:51 1 of doing any discovery. And they were available during the  
2 time period where you could have done it reasonably and fit  
3 everybody's schedule, but due to the government's strategic  
4 choice, you basically turned down that opportunity.

5 And I said earlier that that's a choice that you  
6 are making, and that certainly cuts against you here when  
7 you are now trying to cram in the depositions at a time  
8 that's inconvenient to the plaintiffs who were available  
9 earlier. So I factor that into this issue.

10 I would -- if I were the government, I would work  
11 with the plaintiffs to make this happen in a way that's  
12 convenient to the plaintiff, and so if there's anybody that  
13 can't be flexible enough to come to Washington, D.C. or be  
14 available in the area where they are going to school or  
15 currently residing, then you can come back to me if it just  
16 can't be worked out. But I would urge everybody to try to  
17 work it out.

18 And given the government's choice, especially the  
19 issue about paying for some of these plaintiffs to come to  
20 Eugene to have their depositions taken, I don't quite  
21 understand why the government is adamant about it can't do  
22 that.

23 MS. PIROPATO: Your Honor, there's two points. I  
24 just want to clarify something. One of the reasons we  
25 delayed taking the plaintiffs' depositions is that we had to



15:25:18 1 retain medical experts to understand what questions to ask.  
2 And that was not an easy task, and that didn't happen  
3 until -- I think the contracting for some of them didn't  
4 even go through until late July.

5 THE COURT: Well, that may be, but I vividly  
6 remember the government telling me that you were not going  
7 to partake of discovery, and that was a choice you were  
8 making that was basically a choice that apparently was made  
9 in Washington, D.C. at some higher level.

10 MS. PIROPATO: Mm-hmm.

11 THE COURT: And I said at that time, very well,  
12 but this could result in you waiving the right to take their  
13 depositions.

14 So I can't dismiss that from my mind when I know  
15 what's going on here.

16 MS. PIROPATO: Well, I just wanted to clarify  
17 that, Your Honor, just so you understood it's a complicating  
18 factor.

19 And I would also -- one of the things that my  
20 colleague, Mr. Duffy, pointed out is we don't really have a  
21 mechanism to pay for plaintiffs to come to Eugene to take a  
22 deposition. There's really -- there's not really something  
23 in place that allows us to do that.

24 So that is why we have proposed to go to  
25 plaintiffs. It's not to add any burden onto plaintiffs, but

15:25:42 1 it's a recognition of limitations in how we compensate  
2 travel.

3 And we agree with you, we will do everything we  
4 can to make it as easy for plaintiffs as possible, but we --

5 THE COURT: Well, the government made a -- okay.  
6 But the government made a choice here, and, quite frankly, I  
7 have never in my career been confronted with the types of --  
8 with that tactic by a party to a case.

9 You tell me that you respect the court's decision  
10 but you disagree with it. Well, all right. Disagree with  
11 it all you want, but follow it.

12 Your efforts to prevent discovery were rejected by  
13 the court, and yet your decision not to engage in discovery  
14 represents a rejection of the court's ruling.

15 And now you want to come back and tell the court,  
16 well, yes, we decided tactically not to engage in discovery,  
17 but now we insist that we get discovery in the manner in  
18 which we want to set it up, the time frame that we want to  
19 set it up in.

20 And I am sorry, but, as I said before, in essence,  
21 your position earlier operates as a waiver of your right to  
22 take depositions in a manner that is inconvenient to these  
23 plaintiffs who were available during the summer but the  
24 government rejected the opportunity to depose them at that  
25 time.

15:26:10 1 MR. DUFFY: Well, Your Honor, while I certainly  
2 understand your perspective in how this has developed, I  
3 really think the plaintiffs are coming at this quite  
4 different than the way Rule 30 envisions this. They signed  
5 up to be plaintiffs in this case.

6 Rule 30 give us the right to depose them. There's  
7 nothing in that rule that allows them to dictate precisely  
8 when that's going to happen.

9 And so putting the past -- the history aside,  
10 which I understand where you are coming from, I am looking  
11 forward. And we have got ten weeks. And it seems absurd to  
12 me to take the position that we can't do a deposition in  
13 those ten weeks because they offered weeks in June and July  
14 before we had our medical experts on board to do those  
15 depositions.

16 And so looking forward, I think there's no reason  
17 why we shouldn't be able to take these depositions full  
18 stop.

19 THE COURT: Okay. Well, see what you can do to  
20 work it out, and I am available if you can't. And I will  
21 decide on an individual basis as to the plaintiffs that you  
22 want to depose that aren't available, for whatever reason,  
23 and you won't pay them to come to Eugene to have their  
24 depositions taken for your reasons that apparently the  
25 government has no mechanism to do that. I am not quite sure

15:26:37 1 that that's -- can't be worked around. I don't know why the  
2 government can't be flexible about that given the  
3 government's tactical decision not to take discovery  
4 depositions at a time when they were available.

5 So I am not so sure that that's set in stone back  
6 in Washington, D.C., but you can check with your accountants  
7 back there to see if there's a mechanism by which you could  
8 do that.

9 Okay. What's next?

10 MS. OLSON: Your Honor, next is the issue of the  
11 deadline for the trial memorandum being filed. And the  
12 parties, I believe, are in agreement on this issue that we  
13 would like all of the depositions to be completed prior to  
14 filing with the court our trial memos.

15 And so we are hoping to have --

16 THE COURT: All the depositions of -- so what  
17 would be the -- the plaintiffs' depositions or the experts  
18 or what?

19 MS. OLSON: For plaintiffs' position, it's having  
20 the expert depositions completed. And so we were looking at  
21 a mid-October date, and I don't know if that's a decision  
22 that you would make or that Judge Aiken would make.

23 THE COURT: Do you have a date from Judge Aiken  
24 for the pretrial conference as of yet?

25 MS. OLSON: No. But we are having a status

15:27:02 1 conference with her on -- I believe it's August 27th.

2 THE COURT: Okay. I think probably she would be  
3 the one to give you the date for the trial memos to be filed  
4 because the timing of the trial memos should be coordinated  
5 with the pretrial conference.

6 MS. OLSON: Okay. Thank you, Your Honor.

7 THE COURT: All right.

8 MS. OLSON: The next issue is some other discovery  
9 that plaintiffs are intending to conduct and the discovery  
10 that has not yet been withdrawn, and I want to primarily  
11 just raise a couple of issues.

12 One is interrogatories. As Your Honor may recall,  
13 we decided to substitute contention interrogatories in place  
14 of the 30(b)(6) depositions. And plaintiffs hope to have  
15 those served early next week.

16 And the defendants are conferring with their  
17 clients about the proposed number of interrogatories we  
18 asked them to agree to, which is 70 per defendant.

19 And the reason the number is that high is because  
20 in the past, defendants have asked us to submit individual  
21 discovery requests to each individual defendant.

22 And so most of these contention interrogatories  
23 will be the same for each defendant, but we need to ask all  
24 of the defendants these questions.

25 We are, however, also proposing, between the

15:27:27 1 parties, to narrow the number of contention interrogatories  
2 we need by having the parties identify their fact witnesses  
3 and their exhibits for trial so that we don't have to ask  
4 those questions in an interrogatory.

5 So we are anticipating a response regarding the  
6 number of contention interrogatories defendants will agree  
7 to next week.

8 THE COURT: And how many individuals do you  
9 propose to serve with interrogatories?

10 MS. OLSON: Just the agency defendants, Your  
11 Honor.

12 THE COURT: And how many are those, approximately?

13 MS. OLSON: I believe it's nine.

14 THE COURT: Nine?

15 MS. OLSON: I think it's about nine.

16 THE COURT: 70 interrogatories for each of the  
17 nine?

18 MS. PIROPATO: It would be 630, Your Honor.

19 MR. DUFFY: And we would object to 630  
20 interrogatories.

21 MS. OLSON: We don't anticipate using that many,  
22 Your Honor, and, again, they would be duplicative, in large  
23 part but going to each individual defendant.

24 MR. GREGORY: If I may, Your Honor, it's their  
25 contention -- and we were trying to avoid the Rule 30(b)(6)

15:27:48 1 deposition issue, which they asked us to not do 30(b)(6)  
2 depositions but, rather, do interrogatories.

3 So the issue is, okay, we are not going to do the  
4 30(b)(6) depositions. That's fine. But we want to get to  
5 your fact witnesses and your documents, and we also want to  
6 know the basis for some of their responses to our complaint.

7 And that's why the number because it has to be,  
8 according to them, for each agency defendant. We could send  
9 one to the United States government, one set, and it would  
10 be substantially lower, but then they would come back to us  
11 and say, well, you need to break it out by agency defendant.

12 THE COURT: Okay. It's difficult for me to get a  
13 grip on this issue in the abstract.

14 So you have nine agency heads. You have roughly  
15 70 interrogatories you want to ask each of them. But I  
16 don't have the interrogatories before me, and I don't know  
17 what the nature of the interrogatories is. And it may be  
18 that some of the interrogatories will generate objections  
19 specifically by the government.

20 And so just to talk about a number at this time,  
21 to me, is not going to be fruitful unless I have the  
22 interrogatories and the objections before me.

23 MR. GREGORY: Your Honor, what might be more  
24 prudent to do is for us to propound them with X number --

25 THE COURT: Yes.

15:28:15 1 MR. GREGORY: -- whatever the number we feel we  
2 need, and then they object to whatever they object to.

3 But the idea would be we'll get them all out  
4 there, and then we can argue about whether there's too many  
5 interrogatories.

6 THE COURT: Is there a floor number that the  
7 government won't object to? If so, what is it?

8 MS. PIROPATO: You know, Your Honor, if I could  
9 make a suggestion, this is what I would suggest:

10 THE COURT: Yes.

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

15 THE COURT: Okay. Can you do that?

16 MR. GREGORY: If I may, Your Honor, the only  
17 problem is going to be the time frame. Once we get the  
18 interrogatories, we may need to do, I am going to call it a  
19 follow-up, a deposition or two, and typically it's taken  
20 them three or four weeks to get back to us on, well, you  
21 can't do the full -- the one set to the United States. If  
22 they can get back to us real quick, we can work that system  
23 out today.

24 THE COURT: What's your turnaround time frame, do  
25 you think?



15:28:39 1 MR. DUFFY: I mean, we are in the same position as  
2 you alluded to earlier in that we haven't seen these, and  
3 it's -- in the abstract, setting ourselves to specific time  
4 frames, I want to see the interrogatories. I want to read  
5 them and form some sort of reaction.

6 THE COURT: Can you do that today? Is that what I  
7 heard you say, or is that --

8 MR. GREGORY: The end -- we can do it at the end  
9 of the week.

10 THE COURT: End of the week. All right. That's  
11 tomorrow.

12 MR. GREGORY: Yeah.

13 THE COURT: Okay.

14 MR. GREGORY: The other thing we could do, Your  
15 Honor, is send one set to the United States and then break  
16 it out by defendants, and that's set out, if I am making  
17 sense, if they have no objection to the United States, they  
18 just respond to that.

19 Otherwise the other ones are already out there.

20 THE COURT: Okay. Well, do that by tomorrow then.

21 All right. And then I will wait and see if  
22 there's any objections and deal with it if there are.

23 MS. OLSON: And then, Your Honor, it's still  
24 plaintiffs' intention to withdraw the 30(b)(6) deposition  
25 notices and the requests for admissions, but we are waiting

15:29:01 1 to serve the contention interrogatories, and we are waiting  
2 for Judge Aiken's decision on the motion in limine  
3 requesting judicial notice of government documents before we  
4 withdraw the request for admissions.

5 THE COURT: Okay.

6 MS. OLSON: Okay.

7 And we will be filing a second motion in limine  
8 regarding other -- another set of government documents, and  
9 defendants know that's coming.

10 And as far as we know, defendants don't intend to  
11 file any other motions at this point except for their own  
12 motion in limine in the next several weeks.

13 THE COURT: Their own motion in limine directed  
14 at?

15 MS. OLSON: I don't know.

16 MR. DUFFY: We don't have a specific motion in  
17 limine that we are contemplating now. As we get closer to  
18 trial, I think we may be filing motions once we have  
19 completed these expert depositions. But that's just getting  
20 a little bit ahead. We need to --

21 THE COURT: Sure. Okay. It sounds like something  
22 that Judge Aiken will be taking up at a pretrial conference.

23 MS. PIROPATO: That's right, Your Honor.

24 THE COURT: Okay.

25 MS. OLSON: And then, Your Honor, I think the last

15:29:22 1 issue that I have is regarding our expert, James Gustave  
2 Speth's report, which we served. And the defendants are  
3 still in the process of reviewing that report. And they had  
4 proposed October 26th for their rebuttal expert report,  
5 which puts us three days before trial, and so we were hoping  
6 that date could be moved up a bit.

7 THE COURT: This is their rebuttal expert report  
8 that they are going to file in connection with your expert?

9 MS. OLSON: That's correct. So Mr. Speth was our  
10 expert on the historical record of the government conduct,  
11 and that expert report was dependent on our ability to  
12 conduct some discovery, both informal and formal.

13 And so that was the single expert report that was  
14 delayed.

15 THE COURT: So this particular expert, what's the  
16 name of this expert?

17 MS. OLSON: James Gustave Speth.

18 THE COURT: All right.

19 MS. OLSON: And he filed a declaration in  
20 opposition to defendants' motion for summary judgment, which  
21 they have had since July, but they just received his full  
22 report.

23 THE COURT: And what's the general nature of his  
24 expert testimony?

25 MS. OLSON: His testimony is related to the

15:29:44 1 government's knowledge of climate change, their knowledge of  
2 alternatives to a fossil fuel energy system, and their  
3 conduct over the last 40 years and how they address that  
4 information.

5 THE COURT: All right. And so the proposal that  
6 the government has is to file an expert report in response  
7 to his report by October 26th?

8 MS. OLSON: That's correct. That's the date they  
9 have proposed.

10 THE COURT: The trial starts October 29th.

11 MS. OLSON: Yes.

12 THE COURT: When is your expert, in your view --  
13 when do you anticipate calling him during the trial? At  
14 what -- the trial is going to last a number of weeks. Is he  
15 one of your first witnesses? One of your latter witnesses?  
16 Somewhere in the middle?

17 MS. OLSON: Your Honor, I think he will be one of  
18 the earlier witnesses who we call, although I think he is  
19 not available until November 1 or 2, so -- but ideally the  
20 first week is what we anticipate.

21 THE COURT: Okay.

22 MS. PIROPATO: Your Honor, may I interject? We  
23 got a nonfinal version of the Speth expert report. It's 115  
24 pages not including exhibits. We have yet to review this  
25 report.

15:30:07 1 So it is a tremendously long report. We don't  
2 even know if we are going to file a rebuttal expert to deal  
3 with Dr. -- or Mr. Speth; I believe he is not a doctor --  
4 Mr. Speth's very long report, but we want enough time to do  
5 so. That's all we are asking for.

6 Plaintiffs have known our objections to the  
7 untimely submission of Dr. -- of Mr. Speth's report for  
8 quite a long time. They chose, really, one business day  
9 before our rebuttal reports were due to give us, as I said,  
10 what appears to be the not final copy of Mr. Speth's report.

11 So we got the report after a deposition, I believe  
12 at like 4:00 p.m., Friday, August 10th.

13 So really it was an eleventh-hour production. We  
14 are just asking for time to evaluate it, determine whether  
15 or not we are going to submit rebuttal testimony, and given  
16 the schedule, which is, as Your Honor is aware, quite  
17 difficult for all parties involved, we are trying to create  
18 a realistic timeline should we decide to file a rebuttal  
19 report.

20 THE COURT: How about me getting the status report  
21 while I am driving in for the hearing?

22 MS. PIROPATO: That's exactly what it was like.

23 THE COURT: This is what flexibility is all about.

24 And so October 26th, fine. October 26th.

25 MS. PIROPATO: Thank you, Your Honor.

15:30:34 1 MS. OLSON: Your Honor, just to clarify, for the  
2 record, we did serve a final report. It's a final report.

3 MS. PIROPATO: The one I got from Phil on the hard  
4 drive?

5 MS. OLSON: It should have been. So if there's  
6 any concern about that or if you have a question, we are  
7 happy to meet and confer about that.

8 MS. PIROPATO: Okay.

9 THE COURT: Okay. All right. What else today?

10 MS. OLSON: That's all I have, Your Honor.

11 MR. DUFFY: I do have one additional point to  
12 bring to your attention.

13 Yesterday counsel for the defendants proposed that  
14 we dispense with submitting these joint status reports.  
15 They have become very lengthy. They have become very time  
16 consuming. There is much that goes in there that I would  
17 characterize as airing of grievances.

18 And it puts us in a position where, as you know,  
19 in the past we have had issues where things we have said  
20 during our conferrals end up becoming mischaracterized and  
21 finding themselves in these particular documents.

22 Plaintiffs don't want to get rid of the joint  
23 status reports, but we have agreed in principle to limit  
24 them to solely addressing issues where we need the court's  
25 attention where there's a dispute.

15:30:57 1 And so, for example, today we had a dispute as to  
2 whether we have waived our right to depose the plaintiffs.  
3 We could submit a -- I think a two- or three-page report  
4 that could address that, and that way you know in advance of  
5 the hearing quickly where there's a dispute that requires  
6 your attention.

7 And it will save us a lot of time working on these  
8 things. And our time is better spent doing these  
9 depositions.

10 THE COURT: I agree. If you can trim these status  
11 reports down, I am all in favor of it. So sometimes less is  
12 better than more, so.

13 MS. PIROPATO: Thank you, Your Honor.

14 THE COURT: Okay.

15 MR. DUFFY: Thank you.

16 MS. OLSON: That's fine with plaintiffs, Your  
17 Honor.

18 THE COURT: All right. So when and where are we  
19 going to do the next status conference?

20 THE CLERK: September 21st at 10:00 a.m.

21 THE COURT: When is it?

22 THE CLERK: September 21 at 10:00 a.m.

23 THE COURT: Does that work for everybody?  
24 September 21?

25 MS. OLSON: Yes, Your Honor.

15:31:16 1 MR. DUFFY: Yes. Some of us will want to  
2 participate by telephone, but that works for everyone.

3 THE COURT: That's fine. Okay.

4 MS. PIROPATO: Thank you, Your Honor.

5 THE COURT: Okay. Great.

6 MS. OLSON: Thank you, Your Honor.

7 THE COURT: Thank you.

8 MR. DUFFY: Thank you.

9 THE CLERK: Court is in recess.

10 *(The proceedings were concluded this*  
11 *16th day of August, 2018.)*  
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15:31:20 1 I hereby certify that the foregoing is a true and  
2 correct transcript of the oral proceedings had in the  
3 above-entitled matter, to the best of my skill and ability,  
4 dated this 19th day of August, 2018.

5  
6 /s/Kristi L. Anderson

7 Kristi L. Anderson, Certified Realtime Reporter  
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# EXHIBIT 2

**From:** [Philip Gregory](#)  
**To:** [Norman, Erika \(ENRD\)](#); [Julia Olson](#); [Andrea Rodgers](#)  
**Cc:** [Piropato, Marissa \(ENRD\)](#); [Singer, Frank \(ENRD\)](#); [Boronow, Clare \(ENRD\)](#); [Duffy, Sean C. \(ENRD\)](#)  
**Subject:** RE: 2018.08.17.JULIANA Contention Interrogatories.pdf  
**Date:** Friday, September 14, 2018 11:57:54 AM

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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

---

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

**Sent:** Friday, August 17, 2018 7:46 PM

**To:** Duffy, Sean C. (ENRD) <[SDuffy@ENRD.USDOJ.GOV](mailto:SDuffy@ENRD.USDOJ.GOV)>; Piropato, Marissa (ENRD) <[MPiropato@ENRD.USDOJ.GOV](mailto:MPiropato@ENRD.USDOJ.GOV)>; Singer, Frank (ENRD) <[FSinger@ENRD.USDOJ.GOV](mailto:FSinger@ENRD.USDOJ.GOV)>; Boronow, Clare (ENRD) <[CBoronow@ENRD.USDOJ.GOV](mailto:CBoronow@ENRD.USDOJ.GOV)>; Norman, Erika (ENRD) <[ENorman@ENRD.USDOJ.GOV](mailto:ENorman@ENRD.USDOJ.GOV)>

**Cc:** Julia Olson <[juliaaolson@gmail.com](mailto:juliaaolson@gmail.com)>; Andrea Rodgers <[andrearodgers42@gmail.com](mailto:andrearodgers42@gmail.com)>

**Subject:** 2018.08.17.JULIANA Contention Interrogatories.pdf

Counsel,

As we discussed at the status conference, here are the contention interrogatories for the United States.

Next week we will be sending a similar set of contention interrogatories to each of the agency Defendants.

Regards,

Phil

PHILIP L. GREGORY (SBN 95217)  
GREGORY LAW GROUP  
1250 Godetia Drive  
Redwood City, CA 94062-4163  
Tel: (650) 278-2957  
Email: [pgregory@gregorylawgroup.com](mailto:pgregory@gregorylawgroup.com)

# EXHIBIT 3

**From:** [Philip Gregory](#)  
**To:** [Norman, Erika \(ENRD\)](#); [Julia Olson](#); [Andrea Rodgers](#)  
**Cc:** [Piropato, Marissa \(ENRD\)](#); [Singer, Frank \(ENRD\)](#); [Boronow, Clare \(ENRD\)](#); [Duffy, Sean C. \(ENRD\)](#)  
**Subject:** RE: 2018.08.17.JULIANA Contention Interrogatories.pdf  
**Date:** Tuesday, September 18, 2018 4:45:07 PM

---

Erika,

Sorry for the delay in responding but I have been swamped with the depositions this week.

During our discussion on Friday night, I reiterated that Plaintiffs do not oppose the requested three-week extension based on the conditions set forth in my prior email. You stated Defendants would agree to the 60 contention interrogatories as long as Plaintiffs will not be serving any further interrogatories beyond the pending 60 interrogatories either on the United States or on any of the agencies. I stated that Plaintiffs would not do so as long as Defendants agree to not to take the position that the responses to the 60 interrogatories do not bind them. You agreed and I understood we reached agreement on the number 60.

In our call, I reiterated that Plaintiffs needed substantive responses promptly given the trial date and wanted to start the meet and confer process for those interrogatories where Defendants would only provide objections. You responded that Defendants wanted to reserve their rights to object under Rule 33. I stated that Defendants should know now which interrogatories are objectionable and what those objections are now. Sean wrote about meeting and conferring on Thursday. My suggestion is that we meet and confer on Defendants' objections to the interrogatories so the parties can present any issues to Judge Coffin on Friday.

Regards,

Phil

---

**From:** Norman, Erika (ENRD) <Erika.Norman@usdoj.gov>  
**Sent:** Sunday, September 16, 2018 7:46 PM  
**To:** Philip Gregory <pgregory@gregorylawgroup.com>; Julia Olson <juliaaolson@gmail.com>; Andrea Rodgers <andrearodgers42@gmail.com>  
**Cc:** Piropato, Marissa (ENRD) <Marissa.Piropato@usdoj.gov>; Singer, Frank (ENRD) <Frank.Singer@usdoj.gov>; Boronow, Clare (ENRD) <Clare.Boronow@usdoj.gov>; Duffy, Sean C. (ENRD) <Sean.C.Duffy@usdoj.gov>  
**Subject:** RE: 2018.08.17.JULIANA Contention Interrogatories.pdf

Counsel,

I spoke with Phil on Friday night. My understanding from our conversation is that Plaintiffs do not oppose the requested three-week extension, but would like to start the meet and confer process sooner than that for those interrogatories where we would only provide objections. Although we are not in a position to identify those interrogatories now, we can commit to doing so within a two-week timeframe (9/28/18). Also, my understanding is that Plaintiffs will not be serving any further

interrogatories beyond the 60 we have either on the United States or on any of the agencies. Our responses will be on behalf of the United States and will reflect information we have gathered from the agencies.

Please let us know if we have reached an agreement on these points or if a further call on Monday is needed.

Thank you,

Erika

---

**From:** Norman, Erika (ENRD)

**Sent:** Thursday, September 13, 2018 5:46 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) <[MPiropato@ENRD.USDOJ.GOV](mailto:MPiropato@ENRD.USDOJ.GOV)>; Singer, Frank (ENRD) <[FSinger@ENRD.USDOJ.GOV](mailto:FSinger@ENRD.USDOJ.GOV)>; Boronow, Clare (ENRD) <[CBoronow@ENRD.USDOJ.GOV](mailto:CBoronow@ENRD.USDOJ.GOV)>; Duffy, Sean C. (ENRD) <[SDuffy@ENRD.USDOJ.GOV](mailto:SDuffy@ENRD.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 <[pgregory@gregorylawgroup.com](mailto:pgregory@gregorylawgroup.com)>

**Sent:** Friday, August 17, 2018 7:46 PM

**To:** Duffy, Sean C. (ENRD) <[SDuffy@ENRD.USDOJ.GOV](mailto:SDuffy@ENRD.USDOJ.GOV)>; Piropato, Marissa (ENRD) <[MPiropato@ENRD.USDOJ.GOV](mailto:MPiropato@ENRD.USDOJ.GOV)>; Singer, Frank (ENRD) <[FSinger@ENRD.USDOJ.GOV](mailto:FSinger@ENRD.USDOJ.GOV)>; Boronow, Clare (ENRD) <[CBoronow@ENRD.USDOJ.GOV](mailto:CBoronow@ENRD.USDOJ.GOV)>; Norman, Erika (ENRD) <[ENorman@ENRD.USDOJ.GOV](mailto:ENorman@ENRD.USDOJ.GOV)>

**Cc:** Julia Olson <[juliaaolson@gmail.com](mailto:juliaaolson@gmail.com)>; Andrea Rodgers <[andrearodgers42@gmail.com](mailto:andrearodgers42@gmail.com)>

**Subject:** 2018.08.17.JULIANA Contention Interrogatories.pdf

Counsel,

As we discussed at the status conference, here are the contention interrogatories for the United States.

Next week we will be sending a similar set of contention interrogatories to each of the agency Defendants.

Regards,

Phil

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Redwood City, CA 94062-4163  
Tel: (650) 278-2957  
Email: [pgregory@gregorylawgroup.com](mailto:pgregory@gregorylawgroup.com)



# EXHIBIT 4

**From:** [Duffy, Sean C. \(ENRD\)](#)  
**To:** [Philip Gregory](#); [Julia Olson](#); [Andrea Rodgers](#)  
**Cc:** [Piropato, Marissa \(ENRD\)](#); [Singer, Frank \(ENRD\)](#); [Boronow, Clare \(ENRD\)](#); [Norman, Erika \(ENRD\)](#)  
**Subject:** RE: 2018.08.17.JULIANA Contention Interrogatories.pdf  
**Date:** Wednesday, September 19, 2018 12:16:34 PM

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Phil,

Thank you for your response. Our attorneys have been likewise swamped with depositions this week (and last week). With respect to Plaintiffs' contention interrogatories, we are prepared to agree to 60 interrogatories provided Plaintiffs are not serving any further interrogatories on the United States or the agencies and we do not intend to argue that our responses bind one agency but not another.

As for the timing of our objections and further conferral, we are not going have responses to the objectionable contention interrogatories by the time the parties meet and confer on Thursday. Some of us are travelling to Oregon today and others are out of the office for Yom Kippur. I expect that we will be able to provide written objections to specific interrogatories sometime next week and the parties can confer, as to those objections, by telephone then.

Thank you,  
Sean

---

Sean C. Duffy  
Environment & Natural Resources Division  
U.S. Department of Justice  
Natural Resources Section  
(202) 305-0445 | [sean.c.duffy@usdoj.gov](mailto:sean.c.duffy@usdoj.gov)

---

---

**From:** Philip Gregory <[pgregory@gregorylawgroup.com](mailto:pgregory@gregorylawgroup.com)>  
**Sent:** Tuesday, September 18, 2018 4:44 PM  
**To:** Norman, Erika (ENRD) <[ENorman@ENRD.USDOJ.GOV](mailto:ENorman@ENRD.USDOJ.GOV)>; Julia Olson <[juliaaolson@gmail.com](mailto:juliaaolson@gmail.com)>; Andrea Rodgers <[andrearodgers42@gmail.com](mailto:andrearodgers42@gmail.com)>  
**Cc:** Piropato, Marissa (ENRD) <[MPiropato@ENRD.USDOJ.GOV](mailto:MPiropato@ENRD.USDOJ.GOV)>; Singer, Frank (ENRD) <[FSinger@ENRD.USDOJ.GOV](mailto:FSinger@ENRD.USDOJ.GOV)>; Boronow, Clare (ENRD) <[CBoronow@ENRD.USDOJ.GOV](mailto:CBoronow@ENRD.USDOJ.GOV)>; Duffy, Sean C. (ENRD) <[SDuffy@ENRD.USDOJ.GOV](mailto:SDuffy@ENRD.USDOJ.GOV)>  
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Erika,

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Regards,

Phil

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**Sent:** Sunday, September 16, 2018 7:46 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,

I spoke with Phil on Friday night. My understanding from our conversation is that Plaintiffs do not oppose the requested three-week extension, but would like to start the meet and confer process sooner than that for those interrogatories where we would only provide objections. Although we are not in a position to identify those interrogatories now, we can commit to doing so within a two-week timeframe (9/28/18). Also, my understanding is that Plaintiffs will not be serving any further interrogatories beyond the 60 we have either on the United States or on any of the agencies. Our responses will be on behalf of the United States and will reflect information we have gathered from the agencies.

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Thank you,

Erika

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**Sent:** Thursday, September 13, 2018 5:46 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) <[MPiropato@ENRD.USDOJ.GOV](mailto:MPiropato@ENRD.USDOJ.GOV)>; Singer, Frank (ENRD) <[FSinger@ENRD.USDOJ.GOV](mailto:FSinger@ENRD.USDOJ.GOV)>; Boronow, Clare (ENRD) <[CBoronow@ENRD.USDOJ.GOV](mailto:CBoronow@ENRD.USDOJ.GOV)>; Duffy, Sean C. (ENRD) <[SDuffy@ENRD.USDOJ.GOV](mailto:SDuffy@ENRD.USDOJ.GOV)>

**Subject:** RE: 2018.08.17.JULIANA Contention Interrogatories.pdf

Counsel –

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**From:** Philip Gregory <[pgregory@gregorylawgroup.com](mailto:pgregory@gregorylawgroup.com)>

**Sent:** Friday, August 17, 2018 7:46 PM

**To:** Duffy, Sean C. (ENRD) <[SDuffy@ENRD.USDOJ.GOV](mailto:SDuffy@ENRD.USDOJ.GOV)>; Piropato, Marissa (ENRD) <[MPiropato@ENRD.USDOJ.GOV](mailto:MPiropato@ENRD.USDOJ.GOV)>; Singer, Frank (ENRD) <[FSinger@ENRD.USDOJ.GOV](mailto:FSinger@ENRD.USDOJ.GOV)>; Boronow, Clare (ENRD) <[CBoronow@ENRD.USDOJ.GOV](mailto:CBoronow@ENRD.USDOJ.GOV)>; Norman, Erika (ENRD) <[ENorman@ENRD.USDOJ.GOV](mailto:ENorman@ENRD.USDOJ.GOV)>

**Cc:** Julia Olson <[juliaaolson@gmail.com](mailto:juliaaolson@gmail.com)>; Andrea Rodgers <[andrearodgers42@gmail.com](mailto:andrearodgers42@gmail.com)>

**Subject:** 2018.08.17.JULIANA Contention Interrogatories.pdf

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Next week we will be sending a similar set of contention interrogatories to each of the agency Defendants.

Regards,

Phil

PHILIP L. GREGORY (SBN 95217)

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1250 Godetia Drive  
Redwood City, CA 94062-4163  
Tel: (650) 278-2957  
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# EXHIBIT 5

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  
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(202) 305-0445 (Duffy)  
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*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 &  
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/s/ Erika Norman

\_\_\_\_\_  
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U.S. Department of Justice



# EXHIBIT 6

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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

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)

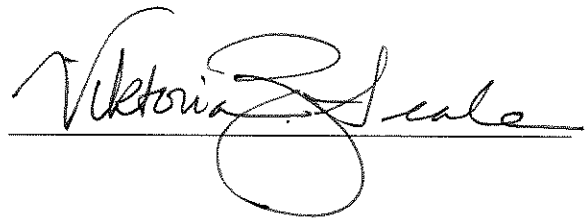
U.S. Department of Justice

**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.

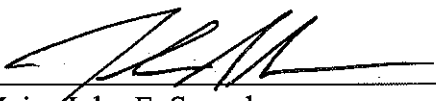
A handwritten signature in black ink, reading "Victoria Z. Seale", is written over a horizontal line. The signature is cursive and stylized, with a large loop at the end of the last name.

**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.

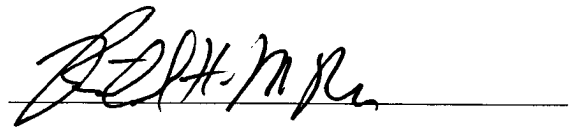
Matthew Rotman

**VERIFICATION OF INTERROGATORY RESPONSES**

I, Richard McNee, am Assistant Solicitor at Dept. of the Interior. 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 "R. 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.

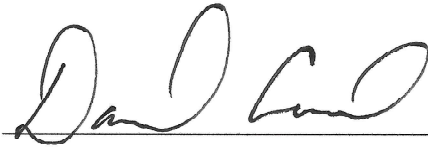
A handwritten signature in blue ink, appearing to read "Joy K. Park", is written over a horizontal line.

**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.



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**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.