

No. 17-71692

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: UNITED STATES OF AMERICA.

UNITED STATES OF AMERICA, *et al.*,

Petitioners,

v.

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF OREGON

Respondent,

and

KELSEY CASCADIA ROSE JULIANA, *et al.*,

Real Parties in Interest.

On Petition for a Writ of Mandamus in
Case No. 6:15-cv-01517-TC-AA (D. Or.)

**PETITIONERS' REPLY IN SUPPORT OF
PETITION FOR WRIT OF MANDAMUS**

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INTRODUCTION

The Answer of the Real Parties in Interest (“Plaintiffs”) highlights the fundamentally improper nature of this case and the need for this Court to intervene. Plaintiffs reaffirm that their challenge is not directed at particular agency actions but instead at “the affirmative aggregate and systemic actions of Defendants,” including everything the federal government has done over the past half-century associated with the development, transportation, or consumption of fossil fuels. Answer 1, 23. Plaintiffs reassert their entitlement to a trial focused on “determining the scientific level of atmospheric CO₂ concentrations necessary to preserve Plaintiffs’ constitutional rights,” after which the district court would “fashion practical remedies” like “an injunction that requires carbon emissions to decline quickly.” Answer 32, 33 n.13, 46. They reaffirm that the basis for this sweeping action is the vague and unprecedented substantive due process “right to a climate system capable of sustaining human life.” Answer 36. Among other things, Plaintiffs reassert their view that this supposed constitutional right demands the invalidation of a statute that involves “promotion of fossil fuels” for that reason alone. Answer 18.

The district court’s response to the petition (Ct. App. Dkt. 12) ignores the extraordinary nature of these claims. It simply points to the absence, so far, of discovery disputes requiring judicial resolution and to the alleged need to develop a factual record on the claims through discovery and trial. With respect, that fundamentally misses the central point. Having discovery and a trial on whether

current and past Administrations over five decades have dealt with the development, transport, and consumption of fossil fuel resources in a way that satisfies the district court's notion of substantive due process flagrantly violates multiple doctrines established to prevent this sort of judicial overreach. Discovery and a trial on these issues would invariably breach the separation of powers established by the Constitution, under which Congress and the Executive Branch, not the Judicial Branch, determine by democratic means the appropriate scope and pace of energy development in light of environmental concerns, and the President, and not the courts, oversees the programmatic and collective actions of Executive Branch departments and agencies. This Court should intervene to prevent this clear violation of long-standing constitutional norms by requiring dismissal of this improper action.

ARGUMENT

I. The order denying the motion to dismiss was based on clear error.

A. Standing doctrine clearly precludes this challenge.

Plaintiffs' argument for Article III standing turns on their theory that they need only allege an injury arising from "aggregate and systemic actions of Defendants" over the past 50 years that allegedly "contributed to the dangerous climate emergency" that Plaintiffs assert has led to threatened and ongoing injury. Answer 1, 23. The district court's acceptance of this "aggregation" theory for establishing standing was clear error. Under this theory, any and every person in the United States would have standing to challenge any self-defined set of government actions or inactions related

to energy development or CO2 emissions, simply by alleging that those actions or inactions “contribute[] to the dangerous climate emergency.” But an essential purpose of standing doctrine is to preclude such sweeping challenges to governmental decision-making. The Supreme Court has made clear that Article III does not permit suits that seek “broad-scale investigation” into government functions, “with the district court determining at the conclusion of that investigation the extent to which those activities may or may not be appropriate,” because “this approach would have the federal courts as virtually continuing monitors of the wisdom and soundness of Executive action.” *Laird v. Tatum*, 408 U.S. 1, 14-15 (1972).

While Plaintiffs’ standing allegations fail on many fronts, *see* Petition 11-21, the most obvious defect is their reliance on the “aggregation” of broad categories of government action. Plaintiffs must show that their alleged injury is “fairly traceable” to a specifically identified agency action (or a failure to take action that was legally compelled) taken by specific Defendants, and is, in addition, not the result of “the independent action of some third party not before the court.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (citation and internal quotation marks omitted). In their discussion of causation, Plaintiffs concede that “discrete” actions of the government “might not in themselves establish causation of a constitutional violation.” Answer 30. They accordingly assert that the whole of the government’s actions over the past 50 years, “taken ‘in combination’ and on a ‘systemwide’ basis,” Answer 30 (quoting *Wilson v. Seiter*, 501 U.S. 294, 301 (1991)), provide a basis for

standing to challenge wholesale vast “categories of government policies, practices, and actions,” Answer 28, which they need merely “describe[]” in general terms. Further, Plaintiffs then assert, “through each of these categories, Defendants authorize the combustion of all fossil fuels in the U.S. and that historically, the United States is responsible for emitting 25.5% of the world[]s cumulative CO2 emissions, thereby establishing Defendants’ causal contribution to Plaintiffs’ injuries.” Answer 28-29 (internal quotation marks omitted).

There are numerous flaws in this theory. The allegation that Defendants in this case “authorize the combustion of all fossil fuels in the U.S.” and that therefore the entire amount of the United States’ contribution of CO2 to the atmosphere is traceable to Defendants is utterly implausible, and need not be taken as true for purposes of a motion to dismiss. *See, e.g., Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is *plausible on its face*.”) (internal quotation marks omitted and emphasis added).

More fundamentally, it is clearly insufficient for purposes of causation analysis to allege that an injury is caused by loosely defined “categories” of actions on the part of numerous government Departments. One need only look to the allegations of the complaint to see that, despite their protestations, Plaintiffs have provided no specificity in identifying particular government actions that assertedly caused their injury and that could be meaningfully subject to judicial review. *See, e.g., D. Ct. Dkt. 7*

at 41, ¶ 112 (“Through its action in permitting the extraction of coal, coal-bed methane, oil, oilshale and natural gas, and oil, coal and electric infrastructure and transmission facilities, and logging, livestock grazing, and off-road vehicle use on public land, the [Department of the Interior] is substantially contributing to dangerous levels of atmospheric CO₂ and a dangerous climate system in our nation”).

The district court’s acceptance of this kitchen-sink approach to alleging causation is clear error. Plaintiffs cite no decision that has permitted standing based on allegations that “categories of government policies, practices, and actions” have, in the aggregate, produced some sort of harm. Answer 28. Instead, they rely on two Supreme Court decisions in which standing was never mentioned. *Brown v. Plata*, 563 U.S. 493 (2011), *cited in* Answer 29, was a suit by prisoners against the Governor of California, where lower courts had previously enjoined Eighth Amendment violations in the State’s provision of medical and mental health care. When the State violated the terms of that injunction, the prisoners convinced a three-judge court to reduce prison populations. *Id.* at 500-01. Plaintiffs here cite language from the Court’s discussion of whether the remedy granted by the lower court was consistent with the Prison Litigation Reform Act, 18 U.S.C. § 3626, without revealing that this discussion had nothing to do with the plaintiffs’ standing. *See* Answer 29 (citing 563 U.S. at 500 n.3). Similarly, *Wilson v. Seiter*, 501 U.S. 294 (1991), *cited in* Answer 30, never mentioned standing, but focused instead on whether the prisoners in that case had established an Eighth Amendment violation.

Also offering no support to Plaintiffs' aggregation approach are *Comer v. Murphy Oil USA, Inc.*, 585 F.3d 855 (5th Cir. 2009) or *Connecticut v. American Electric Power Co., Inc.*, 582 F.3d 309, 347 (2d Cir. 2009), *rev'd on non-standing grounds*, 564 U.S. 410, 429 (2011), *cited in Answer 24*. *Comer* is of no precedential value since it was "vacated" by a grant of rehearing en banc, *see* 607 F.3d 1049, 1053 (5th Cir. 2010), and in any event, did not involve aggregation of categories of actions by a government. *Connecticut* likewise did not involve an attempt to aggregate entire categories of government action. Rather, it involved nuisance claims brought by six states and others against specific utility companies, seeking to reduce emissions of CO₂. The Supreme Court eventually reversed the court of appeals and ruled that the states' common law-claims involving CO₂ emissions were displaced by the Clean Air Act; the Court dismissed the claims on that basis because the Court was equally divided on the issue of standing. 564 U.S. at 420-29

Washington Environmental Council v. Bellon, 732 F.3d 1131 (9th Cir. 2013), is a more pertinent decision, not only because it has not been vacated or overruled like the cases relied on by Plaintiffs but also because it challenged governmental action regarding CO₂ emissions. *Bellon* distinguished *Connecticut*, in part on the ground that states were plaintiffs in that case, unlike in *Bellon* or here. *Id.* at 1143 n.6. This Court made clear that where standing rests on alleged climate-change injuries, to "satisfy the causality element for Article III standing, Plaintiffs must show that the injury is causally linked or 'fairly traceable' to the Agencies' alleged misconduct," and that

“simply saying that the Agencies have failed to curb emission of greenhouse gases, which contribute (in some undefined way and to some undefined degree) to their injuries, relies on an attenuated chain of conjecture insufficient to support standing.” *Id.* at 1141, 1143 (internal quotation marks omitted). Here, Plaintiffs’ allegations are even more conjectural than in *Bellon*; indeed Plaintiffs here do not even specify the particular agency actions or failures they allege cause their injury.

In response to Defendants’ argument that the redressability element of standing was not adequately pleaded, Plaintiffs assert that their complaint “clearly alleges statutory and regulatory authority of Defendants to provide the relief requested.” Answer 31 (citing D. Ct. Dkt. 7 at ¶¶ 98-130, 137, 147, 180, 183, 265, 266). But the cited paragraphs of the complaint contain only vague and general allegations like the President “has failed to dismantle the U.S. fossil fuel edifice” (¶ 180) and refer to statutes only in very general ways without citation to particular statutory provisions that could form the basis for relief directing agencies to reduce CO2 emissions—relief they have not even petitioned the relevant federal agencies to grant, in violation of exhaustion and numerous other principles governing judicial review of agency action. This approach is fatally insufficient for pleading redressability.

Finally, Plaintiffs mischaracterize Defendants’ argument as asserting that their claims are not capable of resolution through the judicial process because they “are constitutionally rather than statutorily based.” Answer 26. The Supreme Court has

stressed time and again that before any court decides questions of constitutional law, it must first “find that the question is presented in a ‘case’ or ‘controversy’ that is, in James Madison’s words, ‘of a Judiciary Nature,’”; that precept “requires plaintiffs, as the parties now asserting federal jurisdiction, to carry the burden of establishing their standing under Article III.” *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 (2006).

The district court lacks subject matter jurisdiction here not because Plaintiffs’ claims are purportedly based on the Constitution, but because the sweeping, all-encompassing “controversy” they ask the courts to resolve is simply not “of the sort traditionally amenable to, and resolved by, the judicial process.” *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 102 (2000).

B. Allowing Plaintiffs to proceed to trial by creating a substantive due process right, contrary to Supreme Court jurisprudence, was clear error.

The Supreme Court has instructed courts considering novel due process claims to “exercise the utmost care whenever we are asked to break new ground in this field, lest the liberty protected by the Due Process Clause be subtly transformed” into judicial policy preferences, and lest important issues be placed “outside the arena of public debate and legislative action.” *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). The Court has “regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, ‘deeply rooted in this Nation’s history and tradition.’” *Id.* at 720-21 (quoting *Moore v. City of East Cleveland*, 431 U.S. 494, 503 (1977) (plurality opinion)). The district court’s refusal to

dismiss the Plaintiffs’ utterly novel due process claim based on an “unenumerated fundamental right” to “a climate system capable of sustaining human life,” D. Ct. Dkt. 83 at 31-32, was a clear error that threatens to put fundamental policy issues of energy development and environmental regulation “outside the arena of public debate and legislative action,” *Glucksberg*, 521 U.S. at 720, and into the federal courts—indeed here a single district court—to oversee.

Plaintiffs’ response is to assert that they allege the infringement of “fundamental rights long recognized by the judiciary.” Answer 2. But they cite no case where the judiciary has found a fundamental right remotely comparable to a right to a particular “climate system,” or to other aspects of the physical environment. Rather, they cite *Obergefell v. Hodges*, 135 S. Ct. 2584, 2598 (2015), but they make no effort to explain the relationship between a right to same-sex marriage and an alleged right to “a climate system capable of sustaining human life.” And there is no relationship, because Plaintiffs’ climate-system right has nothing to do with “certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs.” *Id.* at 2597.

Equally devoid of support is Plaintiffs’ assertion that the right to a climate system capable of sustaining human life is both “deeply rooted in this Nation’s history and tradition” and “fundamental to our scheme of ordered liberty.” Answer 36 (quoting *McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010)). Plaintiffs’ support for this novel proposition consists mostly of lengthy excerpts from an address made by

then-retired President James Madison to an agricultural society in 1818. Answer 37. Although Plaintiffs deserve marks for excavating Madison’s views on the importance of the atmosphere to animals and vegetables, it is obvious that nothing in that address indicates a belief (by Madison or anyone else) in a legal “right” to a certain climate system, let alone such a right enshrined in the Constitution. And no other source suggests that such a right—held by every individual in the Nation—is “deeply rooted” in history and tradition.

Plaintiffs also point to the Clean Air Act, Answer 38, but nothing in that statute suggests that Congress believed it was fleshing out a “deeply rooted” legal (much less constitutional) right. Rather, Congress used its enumerated Article I powers to deal with a *new* problem: “the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles.” 42 U.S.C. § 7401(a)(2).

Finally, Plaintiffs argue that the “right to a stable climate system capable of sustaining human life preserves the baseline conditions” upon which other recognized due process rights depend. Answer 39. It is undeniable that the enjoyment of recognized due process rights would become difficult or impossible without soil, plants, air, minerals and (for that matter) fossil fuels. That does not suggest, however, each and every citizen has judicially enforceable *substantive due process* rights to have the federal government protect those resources or promote their use, and no court has ever recognized such a right. The district court here violated the bedrock rule that in

the absence of “[a]ny historical, textual, or controlling precedential support” for an asserted due process right, a court should “decline to fashion a new due process right out of thin air.” *Carlisle v. United States*, 517 U.S. 416, 429 (1996).

Plaintiffs’ attempt to analogize this case to “state-created danger” cases is wholly unconvincing. Those cases proceed on a tort model, with requirements for liability that are much stricter than in ordinary tort cases. Thus, in *Pauluk v. Savage*, 836 F.3d 1117 (9th Cir. 2016), *cited in* Answer 39, this Court stressed that a plaintiff in a state-created danger suit must show more than a mere failure to take action: “a plaintiff must show that the state engaged in affirmative conduct that placed him or her in danger”; that “the affirmative conduct placed him in a worse position than that in which he would have been had [the state] not acted at all”; and that such conduct “exposed the plaintiff to an actual, particularized danger . . . and the resulting harm must have been foreseeable.” *Id.* at 1124-25 (citations and internal quotation marks omitted). Finally and importantly, “the state actor must have acted with deliberate indifference to a known or obvious danger,” which “requires a culpable mental state more than gross negligence.” *Id.* at 1125 (same). Plaintiffs have satisfied none of these requirements. They have identified no specific affirmative acts carried out with the required culpable mental state that directly placed particular persons in a situation of obvious danger. They have not alleged—and it would be fantastical to allege—that CO2 emissions are actually *greater* than they would have been had the government “not acted at all,” i.e., done nothing to regulate air quality. Nor have Plaintiffs

identified any case in which a court has permitted a state-created danger suit against programmatic government policies, actions, and inactions, or converted such a notion into a constitutional challenge.

C. The public trust doctrine does not supply a cause of action against federal agencies.

As explained in the Petition (at 28-30), the courts in the D.C. Circuit have recently and resoundingly rejected public trust claims against federal agencies identical to those asserted by Plaintiffs here. *See Alec L. v. Jackson*, 863 F. Supp. 2d 11 (D.D.C. 2012), *aff'd*, 561 Fed. Appx. 7 (D.C. Cir. 2014), *cert. denied*, 135 S. Ct. 774 (2014). Plaintiffs assert that those courts were “inattentive” in so ruling. Answer 43. On the contrary, those courts properly found that there is no public trust doctrine that “impose[s] duties on the federal government,” 863 F. Supp. 2d at 13, correctly pointing out that the Supreme Court recently reaffirmed that “the public trust doctrine remains a matter of state law” and that “the contours of that public trust do not depend upon the Constitution.” *PPL Mont., LLC v. Montana*, 565 U.S. 576, 603-04 (2012). Plaintiffs cite *Illinois Central Railroad Company v. Illinois*, 146 U.S. 387, 455 (1892), for the proposition that “the Public Trust Doctrine applies to all governments, state and federal,” but the Supreme Court in *PPL Montana* made clear that its ruling in *Illinois Central* was “‘necessarily a statement of Illinois law’” and that “the public trust doctrine remains a matter of state law.” 565 U.S. at 603-04 (quoting *Idaho v. Coeur d’Alene Tribe*, 521 U.S. 261, 285 (1997)). This Court ruled in *United States v. 32.42 Acres*

of Land, 683 F.3d 1030, 1038 (9th Cir. 2012), that *PPL Montana* is only the latest in a line of Supreme Court cases that have “repeatedly recognized” that the concept of a public trust doctrine pertains only to “the state’s sovereign duties and powers,” the “contours of which are determined by the states, not by the United States Constitution.” *Id.* The district court’s failure to follow this binding authority was clear error.

D. The constitutional challenge to Section 201 of the Energy Policy Act is not within the district court’s jurisdiction.

As noted in the Petition (at 4 n.1), the *only* specific agency action identified in the First Amended Complaint is the Department of Energy’s December 7, 2011 Order No. 3041. That Order granted approval for the export of liquefied natural gas to nations with free trade agreements in effect, from a proposed liquefaction facility and export terminal in Coos Bay, Oregon. *See* Attachment 1, at 2. DOE issued this Order pursuant to Section 201 of the Energy Policy Act of 1992, which was codified as Section 3(c) of the Natural Gas Act, 15 U.S.C. § 717b(c), and provides that the exportation of natural gas to “a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, shall be deemed to be consistent with the public interest, and applications for such . . . exportation shall be granted without modification or delay.” *Id.* Plaintiffs allege that the export of natural gas through the Coos Bay facility pursuant to Section 201 will “increase carbon pollution and exacerbate already-dangerous climate instability,” and thereby violate

Plaintiffs' fundamental rights. D. Ct. Dkt. 7 at 87-88, ¶ 288. Plaintiffs asked the district court to declare Section 201 "unconstitutional on its face," and to declare Order No. 3041 "unconstitutional as applied" and "set it aside." *Id.* at 94.

1. Plaintiffs lack standing to challenge Order 3041 or Section 201.

A court must be particularly careful to ensure that the requirements of Article III are satisfied when plaintiffs ask it to declare that a statute is unconstitutional. *See Am. Foreign Serv. Ass'n v. Garfinkel*, 490 U.S. 153, 161 (1989) (where "a case implicates the fundamental relationship between the Branches, courts should be extremely careful not to issue unnecessary constitutional rulings"). Plaintiffs bear the burden of demonstrating standing to challenge DOE Order No. 3041 or Section 201. They must discharge that burden by showing, among other things, that their alleged injury is sufficiently concrete and particularized. *Lujan*, 504 U.S. at 560. Plaintiffs fail here as they do with the rest of their claims. Plaintiffs simply rely on the vague allegation that *any* federal government action associated with energy production or transport "heightens the danger to Plaintiffs that Defendants' actions in the aggregate have created." D. Ct. Dkt. 7 at 3-4, ¶ 9. That theory utterly fails to allege the requisite "particularized injury" flowing from the agency action being challenged. *See Bellon*, 732 F.3d at 1143 (It "is currently beyond the scope of existing science to identify a specific source of CO₂ emissions and designate it as the

cause of specific climate impacts at an exact location.”). Accordingly, Plaintiffs lack standing to challenge either Order 3041 or Section 201.

2. Exclusive jurisdiction over challenges to orders issued pursuant to the Natural Gas Act is vested in the courts of appeals.

The Department of Energy (DOE) now administers Section 3(c) of the Natural Gas Act, which govern natural gas import/export authorizations with regard to free trade agreement nations. The provision requires DOE to approve natural gas import/export applications “without modification or delay” as to nations “with which there is in effect a free trade agreement requiring national treatment for trade in natural gas.” 15 U.S.C. § 717b(c). To the extent that such import/export approvals are properly reviewable, Section 19(b) of the Natural Gas Act vests in the courts of appeals exclusive jurisdiction. Section 19(b) states that “[a]ny party to a proceeding under this chapter aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia [S]uch court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part.” *Id.* § 717r(b).

This provision requires that challenges to orders regarding the import or export of natural gas under the Natural Gas Act be brought in the appropriate court of

appeals. *See, e.g., Sierra Club v. U.S. Dep't of Energy*, ___ F.3d ___, 2017 WL 3480702, at *10 n.5 (D.C. Cir. Aug. 15, 2017); *W. Va. Pub. Servs. Comm'n v. U.S. Dep't of Energy*, 681 F.2d 847, 852 & n.20 (D.C. Cir. 1982); *Indep. Petroleum Ass'n of Am. v. Economic Regulatory Admin.*, 870 F.2d 168, 173 (5th Cir. 1989); *Mich. Consol. Gas Co. v. Economic Regulatory Admin.*, 889 F.2d 1110, 1111 (D.C. Cir. 1989); *Panhandle Producers & Royalty Owners Ass'n v. Economic Regulatory Admin.*, 822 F.2d 1105, 1108 (D.C. Cir. 1987). As Plaintiffs' challenge is to an order issued pursuant to the Natural Gas Act, the district court lacks jurisdiction because review is "exclusive[ly]" vested in the appropriate court of appeals.

The Supreme Court has made clear that when jurisdiction over a class of orders is specifically vested in courts of appeals, jurisdiction is exclusive not only to review the terms of specific orders but also over any issues "inhering in the controversy." *City of Tacoma v. Taxpayers of Tacoma*, 357 U.S. 320, 336 (1958); *see also Am. Bird Conservancy v. FCC*, 545 F.3d 1190, 1194 (9th Cir. 2008); *Cal. Save Our Streams Council v. Yutter*, 887 F.2d 908 (9th Cir. 1989); *Turtle Island Restoration Network v. U.S. Dep't of Commerce*, 438 F.3d 937 (9th Cir. 2006).

That Plaintiffs here raise a constitutional issue relating to the order in question, including a constitutional challenge to the statute that authorized the order, does not lead to a different result. In *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994), the Supreme Court ruled that a district court lacked jurisdiction where the applicable statute (the Federal Mine Safety and Health Amendments Act) directed review to an

administrative agency and then to the court of appeals. The Court held that the plaintiff's constitutional claims could be "meaningfully addressed in the Court of Appeals" and that the case therefore did "not present the 'serious constitutional question' that would arise if an agency statute were construed to preclude all judicial review of a constitutional claim." *Id.* at 215 & n.20. In *Elgin v. Department of Treasury*, 567 U.S. 1, 9 (2012), the Court again ruled that district court jurisdiction is barred by a specific provision vesting review in a court of appeals, and it made clear that this would apply to a facial challenge to the constitutionality of a statute. Thus, the district court lacked jurisdiction over Plaintiffs' constitutional challenge to Section 201.

For these reasons, Plaintiffs cannot succeed on their claims, and the district court committed clear error in denying Defendants' motion to dismiss.

II. Defendants have no other means of obtaining immediate review needed to avoid a serious intrusion on the separation of powers; without action by this Court, Defendants will be prejudiced in a way not correctable on appeal.

This Court should grant the mandamus petition in order to avoid serious intrusion on the separation of powers and prejudice to Defendants stemming from both a trial and the discovery leading up to it.

Proceeding to a trial on Plaintiffs' nearly boundless challenges to federal policy—the alleged action and inaction of Congress, the President, and numerous federal agencies—would usurp the authority of the political branches to determine national policy regarding energy development, use of public lands, and environmental

protection through democratic means. The district court's rulings show a clear intent to usurp the constitutional authority of the President to "take Care that the Laws be faithfully executed," Art. II, § 3, and of the federal agencies to exercise the authority that Congress has assigned them, subject to specified standards and provisions for judicial review of discrete agency actions, to implement Congress' judgement about energy and environmental policy. Allowing a trial to proceed that ignores these authorities—all in order to weigh whether the entire federal government has violated a nonexistent constitutional right—should not be permitted. *See Perry v. Schwarzenegger*, 591 F.3d 1147, 1157-59 (9th Cir. 2010) (mandamus is appropriate where important constitutional interests could be compromised before appellate review is available).

As to discovery, the suit below is fundamentally contrary to the means Congress has prescribed for challenging agency action, which requires that claims first be presented to the agency and a record developed and assessed there, with subsequent review on that record. Plaintiffs cannot avoid these strictures by couching their objectives in constitutional terms and challenging all federal action concerning CO2 writ large. Plaintiffs, in short, are not entitled to *any* discovery to support an unfounded constitutional claim, which they have no standing to raise, and that seeks to transfer policy-making regarding climate change from Congress and the Executive Branch to the District Court for the District of Oregon.

In any event, Plaintiffs incorrectly claim that the discovery burden is "purely hypothetical" and that the parties have "resolve[d] all discovery disputes" that have

arisen to date. Answer 5; *see also* Answer 10-11. Even accepting as binding Plaintiffs' August 28, 2017 letter that lists certain discovery that they once requested but now no longer seek, the outstanding discovery requests are still far-reaching, burdensome, intrusive, and unresolved.¹ For example, Plaintiffs still seek production from the Departments of Agriculture, State, and Defense of "documents and electronically-stored information sent to or from upper level employees and politically appointed individuals that are not publicly available" on a wide range of topics. Duffy Decl. ¶ 23 & Exhibit 4.² To highlight one request among the 62 requests to the State Department, Plaintiffs seek "each document that refers, relates, regards, or pertains to briefings on climate change that were given or presented to each Secretary of State from 1965 to the present." Duffy Decl. Exhibit 4 at 9 (capitalization altered). And Plaintiffs "plan to serve additional [document requests] to [EPA], Department of Energy, and Department of Commerce." Ct. App. Dkt. 14-2 (page 36 of 96). As to depositions, Plaintiffs on July 12, 2017, sent a list of questions that purported to "narrow the matters for examination for the Rule 30(b)(6) depositions" for each of

¹ We note that Plaintiffs sent this letter only after this Court stayed proceedings on July 25 and required a response to the mandamus petition on July 28. Because Plaintiffs sent the letter after this Court stayed proceedings below, its effect is unclear. As explained below, moreover, both the letter and Plaintiffs' Answer to the petition use conditional language at key junctures, further muddying the effect of the letter.

² The Court ordered the parties to "address the status of all current discovery requests; report all pending discovery deadlines; and identify any ongoing or expected discovery disputes." Ct. App. Dkt. 8 at 2. Defendants' detailed response is in the Declaration of Sean C. Duffy, Attachment 2 to this reply.

the eight defendant agencies. Duffy Decl. Exhibit 13. The list of topics is approximately 10 single-spaced pages, probing a massive array of issues and policy concerning climate change. And the “narrowing” is illusory, as the letter states that “[t]hese questions are not intended to replace the original matters for examination in the Rule 30(b)(6) notices,” which were even broader. *Id.* at 1.

Plaintiffs’ other promises to rein in their discovery requests are similarly illusory. For example, they merely “*do not anticipate* needing to serve a new [document request] on the Executive Office of the President or the President,” and they merely *do not anticipate* any discovery disputes associated with scheduling expert depositions or the exchange of expert reports.” Ct. App. Dkt. 14-2 (pages 17 and 21 of 96) (emphasis added). Regarding the former, Plaintiffs (and the district court) fail to give due “recognition to the paramount necessity of protecting the Executive Branch”—and especially the President and his close advisors—“from vexatious litigation that might distract it from the energetic performance of its constitutional duties.” *Cheney v. U.S. District Court*, 542 U.S. 367, 382 (2004). Regarding the latter, Defendants have been required to undertake the serious burden of responding to Plaintiffs’ thirteen expert reports on a wide array of subjects, including by retaining and developing Defendants’ own expert witnesses. Duffy Decl. ¶ 34. While Plaintiffs tapped the brakes on discovery in response to this Court’s orders, there is no guarantee that (were the Court were to deny the petition) Plaintiffs would not again aggressively pursue their pending discovery requests, and there is every guarantee that Defendants

would have to continue with their expensive and time-consuming engagement and preparation of expert witnesses.

In sum, the discovery Plaintiffs seek is still extraordinarily burdensome and intrusive, and the burden and cost cannot be corrected in an appeal from a final judgment. *See* Petition 32-37. Mandamus is justified by the combined burden of extraordinarily broad discovery and then a trial—all based on legal theories that have no basis in law and offend the separation of powers.

CONCLUSION

The petition should be granted, and the district court should be directed to dismiss the case.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Petitioners are today filing a motion for permission to file an over-length reply in support of petition for writ of mandamus. I certify that this reply contains 5,411 words, exclusive of the material specified in Fed. R. App. P. 32(f). I further certify that this reply complies with the requirements of Fed. R. App. P. 32(a)(5) because it has been prepared in 14-point Garamond, a proportionally spaced font.

s/ Robert J. Lundman
ROBERT J. LUNDMAN

CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2017, I electronically filed the foregoing reply with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. All counsel in this case are participants in and will be served by the Court of Appeals CM/ECF system.

s/ Robert J. Lundman
ROBERT J. LUNDMAN

ATTACHMENT 1: DEPARTMENT OF ENERGY ORDER 3041

UNITED STATES OF AMERICA

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

JORDAN COVE ENERGY PROJECT, L.P.

FE DOCKET NO. 11-127-LNG

ORDER GRANTING LONG-TERM MULTI-CONTRACT AUTHORIZATION
TO EXPORT LIQUEFIED NATURAL GAS BY VESSEL
FROM THE JORDAN COVE LNG TERMINAL
TO FREE TRADE AGREEMENT NATIONS

DOE/FE ORDER NO. 3041

DECEMBER 7, 2011

I. DESCRIPTION OF REQUEST

On September 22, 2011, Jordan Cove Energy Project, L.P. (Jordan Cove), filed an application (Application), with the Office of Fossil Energy (FE) of the Department of Energy (DOE) under section 3 of the Natural Gas Act (NGA)¹ for long-term, multi-contract authorization, to export up to nine million metric tons per year of liquefied natural gas (LNG) from the proposed Jordan Cove LNG terminal and liquefaction facility to be built in Coos Bay County, Oregon, for a 30-year term. The export volume is equivalent to approximately 438 billion cubic feet per year (Bcf/yr) of natural gas.² Jordan Cove seeks to export LNG by vessel to any nation with which the United States currently has, or in the future will have, a Free Trade Agreement (FTA) requiring the national treatment for trade in natural gas, and that currently has, or in the future develops, the capacity to import LNG via ocean-going carriers.³ Jordan Cove seeks to export this LNG on its own behalf and also as agent for third parties. Jordan Cove requests that this authorization commence on the earlier of the date of first export or ten years from the date the authorization is issued (December 7, 2021).

II. BACKGROUND

Jordan Cove is a Delaware limited partnership, which has its principal place of business in Coos Bay, Oregon. It is owned by Jordan Cove Energy Project L.L.C., a Delaware limited liability company, as general partner, Fort Chicago LNG II U.S.L.P., a Delaware limited

¹ The authority to regulate the imports and exports of natural gas, including liquefied natural gas, under section 3 of the NGA (15 U.S.C. §717b) has been delegated to the Assistant Secretary for FE in Redelegation Order No. 00-002.04E issued on April 29, 2011.

² Jordan Cove requested authorization to export up to nine million metric tons of LNG, and stated this is equivalent to 1.2 Bcf/day of natural gas. Consistent with DOE regulations (10 CFR part 590), applications are to provide volumes in Bcf. DOE/FE has converted the 1.2 Bcf/day to 438 Bcf/year, the volume to be authorized.

³ The United States currently has free trade agreements requiring national treatment for trade in natural gas with Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Jordan, Mexico, Morocco, Oman, Peru, and Singapore. FTAs with Israel and Costa Rica do not require national treatment for trade in natural gas. FTAs with Colombia, South Korea, and Panama have been ratified by Congress but have not yet taken effect.

partnership, as limited partner, and Energy Projects Development L.L.C., a Delaware limited partnership, as limited partner.

Jordan Cove states that it will conduct its proposed export operations from an LNG terminal and liquefaction facility to be constructed on the North Spit of Coos Bay in Coos Bay County, Oregon. Jordan Cove's construction and operation of an LNG terminal at this location has already been authorized by the Federal Energy Regulatory Commission (FERC) as an import facility.⁴ Jordan Cove asserts that it has developed modified plans to make use of the terminal as an export facility. According to Jordan Cove, the terminal facilities already authorized by the FERC include two 160,000 cubic meter LNG full-containment storage tanks, a single marine berth capable of accommodating LNG vessels up to Q-Flex size (which DOE/FE notes are up to 216,000 cubic meters of LNG; the equivalent of 4.6 Bcf of natural gas), and on-site utilities and services. The modified plans to enable the facilities to be used for exports of domestically produced LNG include large diameter LNG piping configured for exports and electrically driven liquefaction equipment. Jordan Cove states that the Jordan Cove terminal will be connected to a new interstate natural gas pipeline, the Pacific Connector Gas Pipeline (PCGP), also certificated by the FERC Order.

Jordan Cove states that the source of natural gas supply for Jordan Cove's exports will be the North American natural gas market which they further describe as follows. Jordan Cove's terminal will be connected via the PGCP to the northwest U.S. market hub at Malin, Oregon, providing interconnections with the interstate pipeline system grid, including GTN Pipeline, delivering gas from western Canada and, via its Stanfield interconnection with Northwest Pipeline, from the U.S. Rockies; Ruby Pipeline, delivering gas from western Wyoming,

⁴ Pacific Connector Gas Pipeline, LP; Jordan Cove Energy Project, L.P., 129 FERC ¶61,234 (December 17, 2009) (FERC Order). Rehearing requests of the FERC Order are currently pending.

northwestern Colorado and northern Utah; Tuscarora Pipeline, serving northern Nevada; and, PG&E Redwood Path, serving northern California.

Jordan Cove's contemplated commercial arrangements will be in the form of Liquefaction Tolling Agreements (LTA) under which an individual customer that holds title to natural gas will have the right to deliver that gas to Jordan Cove's terminal for liquefaction services and to receive LNG in exchange for a processing fee paid to Jordan Cove; and the LTA customer will be responsible to source the feed gas for the facility. According to Jordan Cove, the decision whether to utilize liquefaction capacity will be made by the LTA customer and driven by market economics. Jordan Cove is in the process of negotiating LTAs with prospective customers but has not concluded LTAs as of the date the Application was filed.

Jordan Cove further anticipates that the title holder of the LNG at the point of export may be the LTA customer or a party that purchases LNG from an LTA customer pursuant to a long-term contract. Jordan Cove is prepared to accept conditions on its authorization consistent with the conditions imposed in recent DOE/FE orders that have authorized applicants to export as agent for others when not holding title to the LNG at the point of export. In this regard, Jordan Cove states that it will undertake: (1) to file contracts associated with both the long-term supply of natural gas to the Jordan Cove terminal for processing into LNG for export, and the long-term export of LNG from the Jordan Cove terminal within 30 days after their execution; (2) to include in any contract for the transfer of LNG exported under its authorization a provision by which the customer makes the necessary commitments to comply with the requirements imposed by DOE/FE, including to limit deliveries of exported LNG to authorized countries and to report on the countries of destination for actual deliveries; and (3) to register with DOE/FE any title holder for whom Jordan Cove will act as agent to export LNG and to cause such title holder to

provide all information and commitments required by DOE/FE, including its agreement to comply with destination restrictions and other requirements, to include DOE/FE requirements in any subsequent purchase or sale agreement entered into by that title holder, and to file long-term agreements associated with the supply of gas to or the export of LNG from the Jordan Cove terminal.

Jordan Cove states that it intends to file a separate non-FTA application with DOE/FE requesting long-term, authorization to export LNG to those nations with which the United States does not have an FTA requiring national treatment for trade in natural gas, and to which the export of LNG by vessel is not prohibited by U.S. law or policy.

III. STATE OF OREGON PROTEST

Oregon's Position

On October 11, 2011, the State of Oregon (Oregon) submitted a protest (Protest) of Jordan Cove's application. Oregon charged that the Application is both premature and deficient. Oregon observes that Jordan Cove does not presently have a facility from which to export LNG nor has it commenced the process to obtain authorization from the FERC to construct those facilities. Referring to the statutory requirements of section 3(c) of the NGA which mandates approval of the instant application without modification or delay, Oregon states that "...there is currently no exportation of natural gas for which delay must be avoided, and such exportation is years away." Oregon asks that DOE/FE defer ruling on the Application until Jordan Cove has cured these alleged deficiencies. Additionally, Oregon states that, notwithstanding language in DOE's regulations calling for the publication of a notice of application in the Federal Register of all applications under section 3, DOE has not published a notice of Jordan Cove's Application. Oregon maintains that the regulations require that the public be given 30 days in which to

intervene in section 3 proceedings and that this 30 day period can only be shortened in the event of an emergency. According to Oregon, there is no emergency that warrants foregoing publication of a notice of the application.

Furthermore, Oregon maintains that the Application does not meet the minimal substantive requirements of DOE's regulations. Specifically, Oregon contends that:

(1) the Application does not provide the source and security of supply of the natural gas proposed for export, as required by section 590.202(b)(2) of the regulations (10 CFR 590.202(b)(2)); in this regard, because Jordan Cove has requested an authorization that will begin no later than ten years in the future and will run for a term of 30 years, Oregon maintains that the Application must describe the North American reserves supporting the project for nearly 40 years into the future and must take into account both existing authorizations to export and domestic uses that will tap into the same reserves;

(2) the Application does not describe the lack of a national or regional need for the gas, as required by section 590.202(b)(6) of the regulations (10 CFR 590.202(b)(6));

(3) the Application does not appear to contain a verified oath or affirmation by the person filing the Application, or by an officer or authorized representative having knowledge of the facts alleged, as required by section 590.103(b) of the regulations (10 CFR 590.103(b)); and

(4) the Application does not appear to contain the required certification that the signatory is a duly authorized representative of Jordan Cove, as also required by section 590.103(b).

Jordan Cove's Response

On October 17, 2011, Jordan Cove filed the "Response of Jordan Cove Energy Project, L.P. to State of Oregon Protest" (Response). Jordan Cove maintains in the Response that Oregon's Protest demonstrates a misunderstanding of the statutory requirements and the

regulatory processes applicable to FTA applications under section 3(c) of the NGA. Jordan Cove contends also that the Application is neither premature nor deficient and that it is entitled to the statutory presumption that exports to FTA nations are deemed to be within the public interest and must be granted without modification or delay. Jordan Cove states that it is irrelevant that the Jordan Cove Project is not yet constructed and that Jordan Cove has not yet commenced the pre-filing process at the FERC. Jordan Cove maintains that filing of the Application is the first step in a multi-step process and that a long-term export authorization from DOE is required in order to attract prospective customers willing to make large-scale, long-term investments in export arrangements.

Jordan Cove also states that DOE's processing of the Application without publication of a notice of the application in the Federal Register and without requiring a showing involving domestic need for the gas to be exported is consistent with DOE/FE's policy and practice for FTA applications. Jordan Cove observes that DOE's procedural regulations at 10 CFR Part 590 were last updated in 1989, prior to the amendment of NGA section 3(c) by the Energy Policy Act of 1992 (EPA 1992). Jordan Cove cites to *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC*, DOE/FE Order No. 2913 (February 10, 2011) at footnote 6, where the agency stated that "the requirement for granting the application without delay or modification overrides regulatory requirements for public notice and other hearing-type procedures in 10 CFR Part 590." Jordan Cove notes that DOE/FE also stated at page 6 of the *Freeport* order that "[i]n light of DOE's statutory obligation to grant the Application without modification or delay, there is no need for DOE to review the other arguments posed by [the Freeport Project] in support of the Application." Jordan Cove states that the quoted passages from the Freeport order indicate that DOE/FE will not analyze the arguments raised by Oregon that go to alleged deficiencies in

the Application, *e.g.* source and security of supply, description of supporting gas reserves, and national or regional need for the gas. Jordan Cove concludes that while DOE/FE practices do not align with regulations, they are fully consistent with the applicable amended provisions of the NGA. Additionally, Jordan Cove has attached a verification to its Application apparently to correct one of the alleged deficiencies identified by Oregon.

Discussion and Conclusions

The amendment of NGA section 3(c) in EAct 1992 requires that applications to export natural gas, including LNG, to most FTA countries, shall be deemed in the public interest and shall be granted without modification or delay. DOE's procedural regulations have not been updated to reflect the impact of EAct 1992 and Oregon appears to have drawn on this discrepancy between law and regulation in its protest. As discussed below, however, DOE is bound by the statutory amendments to the NGA and has consistently interpreted the notice of application requirements in DOE's regulations at 10 CFR 590.205 to apply only to requests for authorization to export LNG to non-FTA countries. DOE is in the process of preparing a rulemaking to update our procedural regulations in part to make them consistent with the requirements of EAct 1992's changes and eliminate any confusion. Pending promulgation of a final rule implementing these changes, DOE will give full effect to the statutory requirements and continue to interpret the notice of application requirements in our existing rules to apply to non-FTA applications.

DOE's authority under section 3(c), as amended by EAct 1992, is limited to two areas: (1) to ensure that applications are filed with sufficient information to confirm that the applicant is engaged in a meaningful (*i.e.*, not frivolous) effort to undertake natural gas export or import activities, and (2) to provide in any order granting a section 3(c) application that the applicant

will report its export or import activities in sufficient detail to enable DOE to monitor import and export activities.

In the present case, DOE/FE is satisfied of the applicant's seriousness of purpose and the instant order includes monitoring requirements sufficient to ensure that DOE is able to follow export activities under the proposed authorization. By virtue of the amendment of section 3(c) in 1992, our inquiry can go no further.

The substantive issues raised by Oregon regarding alleged deficiencies in the Application (source and security of supply, adequacy of supporting gas reserves, and national or regional need for the gas) and the claim that the Application is premature thus are not matters subject to regulatory review and they are not grounds for deferring or denying the Application.

Oregon also is concerned over this agency's practice of not publishing notices of section 3(c) applications in the Federal Register. In our view, the publication of a Federal Register notice of application serves two potential purposes. With respect to applications under section 3(a) of the NGA, a Federal Register notice alerts the public to the fact that an application has been filed and provides an avenue for the submission of motions to intervene, comments, and/or protests of the application.

Yet, with respect to applications under section 3(c) of the NGA, the law precludes any public interest review of the application and requires that the application be granted without modification or delay. In this circumstance, the publication of a Federal Register notice is meaningful only for the limited purpose of informing the public that an application has been filed and that DOE/FE has fulfilled its statutory charge by issuing an order granting the Application.

Neither Oregon's interests nor the interests of other potential intervenors in this or other section 3(c) applications have been prejudiced by the failure of this agency to publish Federal

Register notices of section 3(c) applications. There can be no prejudice where the agency is required to deem applications to be in the public interest and to grant them without modification or delay.

On the other hand, we do agree that publication of a Federal Register notice of a section 3(c) application may be helpful for the limited purpose of informing the public of the filing and the fact that it has been granted. All such applications and orders are already posted on the agency's website and maintained on the website for public viewing indefinitely. However, we agree that publication in the Federal Register could be a helpful way of keeping the public even better informed of the filing of section 3(c) applications and the issuances of orders authorizing section 3(c) imports and exports from and to FTA countries. To that end, we will commence publication of such notices on a monthly basis.

As noted previously, this agency is currently revising and updating its procedural regulations. As part of that exercise, we also intend to propose the adoption of this new notice publication procedure in our revised regulations.

FINDINGS

(1) Section 3(c) of the NGA was amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486) to require that applications to authorize (a) the import and export of natural gas, including LNG, from and to a nation with which there is in effect a free trade agreement requiring national treatment for trade in natural gas, and (b) the import of LNG from other international sources, be deemed consistent with the public interest and granted without

modification or delay. The instant Application falls within section 3(c), as amended, and therefore, DOE/FE is charged with granting the Application without modification or delay.⁵

(2) In light of DOE's statutory obligation to grant the Application without modification or delay, there is no need for DOE/FE to review the other arguments posed by Jordan Cove in support of the Application. The instant grant of authority should not be read to indicate DOE's views on those arguments.

(3) The countries with which the United States has an FTA requiring national treatment for trade in natural gas currently are: Australia, Bahrain, Canada, Chile, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Peru, and Singapore.

(4) DOE/FE addressed the issue of agency rights in *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC*, DOE/FE Order No. 2913 (Order 2913), issued February 10, 2011. In Order 2913, DOE/FE approved a proposal by Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC (collectively, FLEX) to register each LNG title holder for whom FLEX sought to export LNG as agent. FLEX also proposed that this registration include a written statement by the title holder acknowledging and agreeing to comply with all applicable requirements included in its export authorization and to include those requirements in any subsequent purchase or sale agreement entered into by that title holder. In the FLEX application (FE Docket No. 10-160-LNG), FLEX also stated that it would file under seal with DOE/FE any relevant long-term commercial agreements that it reached with the LNG title holders on whose behalf the exports were performed.

⁵ DOE further finds that the requirement for public notice of applications and other hearing-type procedures in 10 CFR Part 590, are applicable only to applications seeking to export natural gas, including LNG, to countries with which the United States does not have a free trade agreement requiring national treatment for trade in natural gas.

In Order 2913, DOE/FE found that the above proposal was an acceptable alternative to the non-binding policy adopted by DOE/FE in *Dow Chemical*,⁶ which established that the title for all LNG authorized for export must be held by the authorization holder at the point of export. DOE/FE agreed to accept the FLEX alternative because it would ensure that the title holder was aware of all DOE/FE requirements applicable to the proposed export and would provide DOE with a record of all authorized exports and direct contact information and a point of contact with the title holder. Moreover, DOE/FE found that the registration process was responsive to current LNG markets and provided an expedited process by which companies seeking to export LNG can do so. Additionally, in Order 2913, DOE/FE noted that those entities that hold title or expect to hold title to LNG that is stored in domestic LNG terminals can choose to submit an application to DOE for their own authorization to export LNG, and are not required to use the agency rights held by others.

The same policy considerations that supported DOE/FE's acceptance of the alternative proposal in Order 2913 apply here as well. The authorization granted herein shall be conditioned to require that where Jordan Cove proposes to export as agent for others, Jordan Cove must register those companies in accordance with the procedures and requirements described herein.

ORDER

Pursuant to section 3 of the NGA, it is ordered that:

A. Jordan Cove is authorized to export domestically produced LNG by vessel from the Jordan Cove LNG terminal in Coos Bay, Oregon, up to the equivalent of 438 Bcf per year of natural gas (nine million metric tons per year) for a 30-year term, beginning on the earlier of the

⁶ *The Dow Chemical Company*, DOE/FE Opinion and Order No. 2859 (FE Docket No. 10-57-LNG), October 5, 2010, at p. 7 and 8.

date of first export or 10 years from the date the authorization is issued (December 7, 2021), pursuant to one or more long-term LTAs with third parties that do not exceed the term of this authorization.

B. This LNG may be exported to Australia, Bahrain, Canada, Chile, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Peru, and Singapore, and to any nation that the United States subsequently enters into a FTA requiring national treatment for trade in natural gas, provided that the destination nation has the capacity to import ocean going vessels. FTA countries are currently identified by DOE/FE at: <http://www.fossil.energy.gov/programs/gasregulation/index.html>.

C. Jordan Cove shall ensure that all transactions authorized by this order are permitted and lawful under United States laws and policies, including the rules, regulations, orders, policies, and other determinations of the Office of Foreign Assets Control of the United States Department of the Treasury. Failure to comply with this requirement could result in rescission of this authorization and/or other civil or criminal remedies.

D. Jordan Cove shall file with the Office of Natural Gas Regulatory Activities all executed long-term LTA's associated with the long-term export of LNG from the Jordan Cove LNG terminal within 30 days of their execution. Jordan Cove shall file with the Office of Natural Gas Regulatory Activities all executed long-term contracts associated with the long-term supply of natural gas to the Jordan Cove LNG terminal with the intent to process this natural gas into LNG for export within 30 days of their execution.

E. Jordan Cove shall include the following provision in any contract for the sale or transfer of LNG exported pursuant to this Order:

"Customer or purchaser acknowledges and agrees that it will resell or transfer LNG purchased hereunder for delivery only to countries identified in Ordering Paragraph B of DOE/FE Order No. 3041, issued December 7, 2011 in FE Docket No. 11-127-LNG, and/or to purchasers that have agreed in writing to limit their direct or indirect resale or transfer of such LNG to such countries. Customer or purchaser further commits to cause a report to be provided to Jordan Cove that identifies the country of destination, upon delivery, into which the exported LNG was actually delivered, and to include in any resale contract for such LNG the necessary conditions to ensure that Jordan Cove is made aware of all such actual destination countries."

F. Jordan Cove is permitted to use its authorization in order to export LNG on behalf of or as agent for others, after registering the other party with DOE/FE. Registration materials shall include an acknowledgement and agreement by the registrant to supply Jordan Cove with all information necessary to permit Jordan Cove to register that person or entity with DOE/FE, including: (1) the registrant's agreement to comply with this Order and all applicable requirements of DOE's regulations at 10 CFR Part 590, including but not limited to destination restrictions; (2) the exact legal name of the registrant, state/location of incorporation/registration, primary place of doing business, and the registrant's ownership structure, including the ultimate parent entity if the registrant is a subsidiary or affiliate of another entity; (3) the name, title, mailing address, e-mail address, and telephone number of a corporate officer or employee of the registrant to whom inquiries may be directed; (4) within 30 days of execution, a copy, filed with DOE/FE under seal, of any long-term contracts, including processing agreements, that result in the export of natural gas, including LNG; and (5) within 30 days of execution by a person or entity required by this Order to register, a copy, filed with DOE/FE under seal, of any LTA's

associated with the long-term supply of natural gas to the Jordan Cove LNG terminal with the intent to process this natural gas into LNG for export pursuant to this authorization.

G. Each registration submitted pursuant to this Order shall have current information on file with DOE/FE. Any changes in company name, contact information, change in term of the long-term contract, termination of the long-term contract, or other relevant modification, shall be filed with DOE/FE within 30 days of such change(s).

H. Within two weeks after the first export of domestically produced LNG occurs from the Jordan Cove liquefaction facility, Jordan Cove shall provide written notification of the date that the first export of LNG authorized in Order Paragraph A above occurred.

I. Jordan Cove shall file with the Office of Natural Gas Regulatory Activities, on a semi-annual basis, written reports describing the progress of the planned liquefaction facility project. The reports shall be filed on or by April 1 and October 1 of each year, and shall include information on the progress of the Jordan Cove LNG Terminal liquefaction facility, the date the facility is expected to be operational, and the status of the long-term contracts associated with the long-term export of LNG and any long-term supply contracts.

J. Monthly Reports: With respect to the LNG exports authorized by this Order, Jordan Cove shall file with the Office of Natural Gas Regulatory Activities, within 30 days following the last day of each calendar month, a report indicating whether exports of LNG have been made. The first monthly report required by this Order is due not later than the 30th day of the month following the month of first export. In subsequent months, if exports have not occurred, a report of “no activity” for that month must be filed. If exports of LNG have occurred, the report must give the following details of each LNG cargo: (1) the name(s) of the authorized exporter registered with DOE/FE; (2) the name of the U.S. export terminal; (3) the name of the LNG

tanker; (4) the date of departure from the U.S. export terminal; (5) the country of destination; (6) the name of the supplier/seller; (7) the volume in Mcf; (8) the price at point of export per million British thermal units (MMBtu); (9) the duration of the supply agreement (indicate spot sales); and (10) the name(s) of the purchaser (s).

(Approved by the Office of Management and Budget under OMB Control No. 1901-0294)

K. All monthly report filings shall be made to U.S. Department of Energy (FE-34), Office of Fossil Energy, Office of Natural Gas Regulatory Activities, P.O. Box 44375, Washington, D.C. 20026-4375, Attention: Ms. Yvonne Caudillo. Alternatively, reports may be e-mailed to Ms. Caudillo at Yvonne.caudillo@hq.doe.gov or ngreports@hq.doe.gov, or may be faxed to Ms. Caudillo at (202) 586-6050.

Issued in Washington, D.C., on December 7, 2011.



John A. Anderson
Manager, Natural Gas Regulatory Activities
Office of Oil and Gas Global Security and Supply
Office of Fossil Energy

ATTACHMENT 2: DECLARATION OF SEAN C. DUFFY

No. 17-71692

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

In re: UNITED STATES OF AMERICA.

UNITED STATES OF AMERICA, *et al.*,

Petitioners,

v.

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF OREGON

Respondent,

and

KELSEY CASCADIA ROSE JULIANA, *et al.*,

Real Parties in Interest.

On Petition For A Writ Of Mandamus In

Case No. 6:15-cv-01517-TC-AA (D. Or.)

**DECLARATION OF SEAN C. DUFFY IN SUPPORT OF
PETITION FOR WRIT OF MANDAMUS**

I, Sean C. Duffy, hereby declare as follows:

1. I am a trial attorney in the Natural Resources Section of the Environment and Natural Resources Division of the United States Department of Justice. I am an attorney of record for the Defendants in the proceedings before the District Court of the District of Oregon in this case and I have personal knowledge of the matters stated in this declaration.

2. On July 28, the Court ordered the parties to “address the status of all current discovery requests; report all pending discovery deadlines; and identify any ongoing or expected discovery disputes.” Dkt. No. 8 at 2. I address each of these discovery-related issues below. I have also attached some of the relevant discovery documents to this declaration.

Requests for Admission (“RFAs”)

3. On January 20, 2017, Plaintiffs propounded requests for admission jointly on the Executive Office of the President (“EOP”) and the Environmental Protection Agency (“EPA”). The RFAs address complex scientific and policy matters. For example, the RFAs ask the EOP and the EPA to admit that global temperature increases of a certain level above pre-industrial levels and atmospheric carbon dioxide of a certain level of concentration threaten health and public welfare.

4. On May 31, the EOP and the EPA served their responses, objecting to the RFAs on several bases and denying each request. Plaintiffs complained that the

May 31 responses do not distinguish the EOP and EPA's different grounds for objecting. Ex. 10 (Joint Status Report as of June 12, 2017) at 3-4.

5. Following further discussions, on July 12, Defendants served separate responses to the RFAs on behalf of the EOP and the EPA. There are currently no pending deadlines as to this discovery request.

6. On August 28, after this Court stayed district court proceedings, Plaintiffs sent a letter stating that they "will not move to compel further responses to the RFAs" as to the EOP and will not seek to compel answers to the RFAs as to the EPA. Olson Decl. Ex. 5 at 1, Dkt. No. 14-2 at 116. Instead, Plaintiffs intend to obtain the information they seek from the EPA via a Rule 30(b)(6) deposition. *Id.*

Requests for Production ("RFPs") of Documents at Presidential Libraries and at National Archives Facilities

7. On February 21, Plaintiffs propounded RFPs on Defendants seeking unredacted copies of a total of 383 separately identified documents maintained at the presidential libraries of Presidents Reagan, George H.W. Bush, Clinton, and George W. Bush. On March 7, Plaintiffs propounded RFPs on Defendants seeking unredacted copies of unspecified additional documents on microfiche and in approximately 160 boxes housing collections of documents in the presidential libraries of Presidents Kennedy, Johnson, Reagan, George H.W. Bush, Clinton, and George W. Bush. Plaintiffs also sought unredacted records of the EPA and the U.S.

Information Agency located at the National Archives (“NARA”) in College Park, Maryland.

8. Defendants conferred with NARA officials and explained to Plaintiffs that they sought (1) documents covered by the Presidential Records Act that may not be disclosed absent a waiver from the current White House and the White House from which the document originated, (2) classified materials that must undergo a lengthy declassification process, or (3) EPA records that NARA has not yet processed. Ex. 2 (March 8 Status Conf. Tr.) at 12:18-14:15; Ex. 5 (Joint Status Report as of April 3, 2017) at 9. In discussions with NARA, Defendants determined that the EPA documents constitute 388 cubic feet of documents. Ex. 5 at 10.

9. During the parties’ April 7 status conference, the district court tolled the deadlines on document production to allow the parties to meet and confer as to the scope of document production. Ex. 6 (April 7 Status Conf. Tr.) at 28:21-29:3. Plaintiffs subsequently offered to visit NARA to review the 388 cubic feet of EPA documents. Defendants confirmed that Plaintiffs may visit records facilities and review non-classified records subject to an appropriate protective order that protects personally-identifiable information.

10. Defendants confirmed that the documents Plaintiffs seek pertaining to the George W. Bush administration cannot be obtained because the Presidential Records Act exempts such documents from disclosure until twelve years after the

conclusion of an administration. Ex. 10 (Joint Status Report as of June 12, 2017) at 7 (citing 44 U.S.C. § 2204).

11. On July 12, Defendants provided Plaintiffs with a draft protective order and a further update. *See* Olson Decl. Ex. 4, Dkt. No. 14-2 at 47-48. At the time the stay was entered, the parties had not yet negotiated a final protective order.

12. In their August 28 letter, Plaintiffs indicate that they will not move to compel the production of NARA documents that Defendants will not produce. Olson Decl. Ex. 5 at 1. Because the district court tolled discovery deadlines to allow the parties to meet and confer as to the scope of Plaintiffs' RFPs, and because the parties were continuing to do so when the stay was entered on July 25, there are no pending deadlines as to this discovery request.

RFPs of Documents Relating to "Wayne Tracker" Emails

13. On March 17, Plaintiffs propounded their Third Set of RFPs on Defendants seeking any communications on the subjects of climate change or energy policy between any Defendant and Rex Tillerson via a "Wayne Tracker" email address. The RFPs define Defendants broadly to include any and all current or former employees of all twelve Defendant entities in this case, without limitation.

14. The Parties discussed the "Wayne Tracker" RFPs several times, during which Defendants objected to these requests.

15. Because the district court tolled discovery deadlines to allow the parties to meet and confer as to the scope of Plaintiffs' RFPs, and because the meet and confer process was not complete when the stay was entered, there are no specific deadlines as to this discovery request.

16. In their August 28 letter, Plaintiffs withdrew their "Wayne Tracker" RFPs "in light of Intervenor Defendants' withdrawal from the case." Olson Decl. Ex. 5 at 2, Dkt. No. 14-2 at 51.

RFPs on the President and the EOP, and on the Departments of Agriculture, State, and Defense

17. On March 7, Plaintiffs propounded RFPs on President Donald J. Trump and the Executive Office of the President. Ex. 1 (March 7 RFPs on the President and the EOP). These requests demand, among other things, each document that "refers, regards, or pertains to the issue of climate change" over numerous presidential administrations. *Id.*

18. On March 31, Plaintiffs propounded RFPs on the Departments of Agriculture, State, and Defense. Among other characteristics, these requests define "agencies" to include every employee or contractor—present or former—that worked within the agency, without limitation. *See, e.g.*, Ex. 4 (March 31 RFPs on Dep't of State) at 4 (defining "Federal Defendant" to include "any and all of each FEDERAL GOVERNMENT DEFENDANT's current or former . . . employees . . .").

19. In the April 3 Joint Status Report and during the April 7 status conference, Defendants emphasized to the Court the extraordinary burden that the process of identifying, reviewing, and producing responsive documents would impose, and stated that the process of responding would “immediately require an enormous investment of time and resources that cannot feasibly be accomplished” in the abridged time-frame for fact discovery that Plaintiffs are seeking. Ex. 5 (Joint Status Report as of April 3, 2017) at 10.

20. By way of example, Defendants noted that the requests propounded on the State Department alone sought documents pertaining to climate change from every single employee over the course of decades. Ex. 6 (April 7 Status Conf. Tr.) at 12:2-6; *see* Ex. 4 (March 31 RFPs on Dep’t of State) at 11-13, 15-17. Defendants offered to meet and confer with Plaintiffs. Ex. 6 at 28:6-10. The district court tolled the discovery deadlines for the RFPs in order to allow the parties to meet and confer and for Plaintiffs to narrow the RFPs. *Id.* at 28:20-29:3.

21. The parties met and conferred on May 4 and Plaintiffs agreed to narrow their requests as to temporal scope, so that the requests apply only to certain agency personnel, and as to the types of documents sought. Ex. 7 (Joint Status Report as of May 12, 2017) at 3; *see also* Ex. 8 (May 18 Status Conf. Tr.) at 21:24-22:3.

22. On May 19, Plaintiffs propounded revised RFPs on the President and the EOP and on the Departments of Agriculture, State, and Defense supplanting the

previously propounded requests. The revised requests, however, do not alter many of the objectionable and burdensome features of the original requests. *Compare* Ex. 4 (March 31 RFPs on Dep't of State) *with* Ex. 9 (May 19 revised RFPs on Dep't of State); *see also* Ex. 10 (Joint Status Report as of June 12, 2017) at 6. In the case of the RFPs propounded on the President and the EOP, the revised RFPs also seek information that is subject to the executive privilege. Ex. 10 at 6; *see also* Ex. 11 (June 14 Status Conf. Tr.) at 10:24-11:2.

23. In the wake of the revised requests, Defendants transmitted a letter outlining the outstanding objections. Ex. 12 (Defs.' letter of June 23). In a June 27 response, Plaintiffs contended—despite the language in the RFPs—that the focus of the RFPs are documents “from upper level employees and politically appointed individuals that are not publicly available.” Olson Decl., Ex. 2 at 2, Dkt. No. 14-2 at 35.

24. At the time the stay was entered on July 25, the parties continued to discuss what information Plaintiffs hope to obtain through the RFPs and how that information relates to specific factual disputes identified in the pleadings. Because the district court tolled discovery deadlines to allow the parties to meet and confer as to the scope of Plaintiffs' RFPs, and because that process was far from complete when the stay was entered, there are no specific deadlines as to these discovery requests.

25. There is an existing dispute between the parties as to whether Plaintiffs are permitted discovery into the internal deliberations of government officials. Defendants have taken the position that such communications are protected from disclosure pursuant to the deliberative process privilege, while Plaintiffs continue to seek such communications. *See* Olson Decl., Ex. 8 at 136:17-142:2, Dkt. No. 14-2 at 71-77; *see, e.g.*, Ex. 9 (May 19 revised RFPs on Dep't of State) at 9-10, ¶¶ 4-6 (seeking briefings on climate change given or presented to incoming and outgoing Secretaries of State and presidential administrations).

26. In their August 28 letter, Plaintiffs claim to withdraw the RFPs served on the President and the EOP. Olson Decl., Ex. 5 at 2, Dkt. No. 14-2 at 52. With regard to RFPs propounded on the Departments of Agriculture, State, and Defense, Plaintiffs claim to have again narrowed those RFPs, but have not yet served those “narrowed” RFPs.

Depositions

27. On March 24, Plaintiffs submitted a letter to Defendants indicating their intention to seek a total of twelve Rule 30(b)(6) depositions: one for each agency and executive-component Defendant. In addition, Plaintiffs indicated their intention to depose four cabinet-level Secretaries (or the equivalent)—(1) Secretary Rex Tillerson (United States Department of State), (2) Administrator Scott Pruitt (United States Environmental Protection Agency), (3) Secretary Rick Perry (United States

Department of Energy), and (4) Secretary Ryan Zinke (United States Department of the Interior)—as well as two other federal employees. Ex. 3 (Pls.’ letter of March 24).

28. During a March 31 meet and confer, and in the parties’ April 3 Joint Status Report, Defendants noted that it is extraordinary and highly unusual to seek the deposition of Cabinet-level Secretaries and that such a demand requires a showing of exceptional circumstances. Ex. 5 (Joint Status Report as of April 3, 2017) at 9. Defendants also noted that it would be impossible to meaningfully confer regarding the proposed 30(b)(6) depositions of the twelve Defendants until Plaintiffs identify topics upon which they will be seeking testimony. *Id.* at 11.

29. On May 11, Plaintiffs noticed the depositions of two government employees: Michael Kuperberg, Executive Director of the United States Global Change Research Program (“USGCRP”), and C. Mark Eakin, Coordinator of the National Oceanic and Atmospheric Administration’s (“NOAA”) Coral Reef Watch program. Ex. 7 (Joint Status Report as of May 12, 2017) at 4-5. The depositions of Drs. Kuperberg and Eakin took place on July 20 and 21, respectively.

30. During Dr. Kuperberg’s deposition, Defendants objected to certain questions on potential executive privilege grounds. Ex. 14 (Kuperberg Depo.) at 100:11-102:16, 110:8-18. If the stay is lifted, Defendants will confer with the White House. If the White House decides to invoke executive privilege, there would be a dispute between the parties regarding executive privilege.

31. The parties met and conferred as to the 30(b)(6) depositions on June 30. Based on those discussions, on July 12, Plaintiffs withdrew one of the topics from a list they had provided and tendered a list of questions intended to inform future discussions on narrowing the Rule 30(b)(6) topics. Ex. 13 (Pls.' letter of July 12).

32. In their August 28 letter, Plaintiffs stated that they will not notice the depositions of the cabinet-level officials.

33. Plaintiffs' Rule 30(b)(6) notices remain outstanding. There is an existing dispute as to the proper scope of the Rule 30(b)(6) depositions. If the current stay were to be lifted, the parties would either continue to meet and confer in an effort to narrow the noticed Rule 30(b)(6) topics, or Defendants would have to move for a protective order to narrow the topics.

Expert Reports

34. Plaintiffs have proffered nine expert reports, and have indicated that they intend to proffer four additional expert reports. The expert reports address a wide-array of subjects. For example, some of Plaintiffs' proposed experts characterize the environmental impacts of climate change on various fronts, including with respect to the earth's energy balance, global ice sheet disintegration and glacier retreat, extreme weather events, ocean acidification and warming, coral reef loss, ecosystem shift, biodiversity loss, and physical and psychological impacts on humans. Other proposed experts opine on policy-related topics, such as the value of preparing

consumption-based greenhouse-gas inventories, carbon-sequestration efforts, the feasibility of transitioning to renewable-energy sources, and the social cost of carbon. Another proposed expert will testify to the historical knowledge of climate science and the relationship between the U.S. government and the fossil fuel industry. As a result, the Defendants will be required to expend significant time and resources retaining and developing their own expert witnesses on these topics.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 11, 2017

Respectfully submitted,

/s/ Sean C. Duffy

SEAN C. DUFFY (NY Bar No. 4103131)

Trial Attorney

U.S. Department of Justice

Environment & Natural Resources Division

Natural Resources Section

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Exhibit 1 to Declaration of Sean C. Duffy

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

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

Plaintiffs,

v.

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

Federal Defendants.

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

PLAINTIFFS' FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS TO
DEFENDANTS THE EXECUTIVE OFFICE
OF THE PRESIDENT AND PRESIDENT
DONALD TRUMP

PROPOUNDING PARTIES: PLAINTIFFS

**RESPONDING PARTIES: DEFENDANTS THE EXECUTIVE OFFICE OF THE
PRESIDENT AND PRESIDENT DONALD TRUMP**

SET NO: ONE

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure (“FRCP”), Plaintiffs request Defendants The Executive Office of the President and President Donald Trump to produce the documents specified below, within thirty (30) days of service, or at such other time and place, or in such other manner, as may be mutually agreed upon by the parties. Production by the Federal Government Defendants of documents shall be in accordance with the Instructions and Definitions set forth below and FRCP 34.

I. DEFINITIONS

A. As used herein, the term “DOCUMENT(s)” means any kind of written, graphic, or recorded matter, however produced or reproduced, of any kind or description, whether sent, received, or neither, including drafts, originals, non-identical copies and information stored magnetically, electronically, photographically or otherwise, and including but not limited to: studies, papers, books, accounts, letters, diagrams, pictures, drawings, photographs, correspondence, telegrams, cables, text messages, emails, memoranda, notes, notations, work papers, intra-office and inter-office communications, communications to, between and among employees, contracts, financial agreements, grants, proposals, transcripts, minutes, orders, reports, recordings or other documentation of telephone or other conversations, interviews, committee meetings, departmental meetings, company meetings or other meetings, affidavits, slides, statements, summaries,

opinions, indices, analyses, publications, questionnaires, answers to questionnaires, statistical records, ledgers, journals, lists, logs, tabulations, charts, graphs, maps, surveys, sound recordings, computer printouts, tapes, discs, microfilm, all other records kept, regardless of the title, author or origin.

- B. As used herein, the phrase “REFERS, RELATES, REGARDS, OR PERTAINS TO” means containing, alluding to, responding to, commenting upon, discussing, showing, disclosing, explaining, mentioning, analyzing, constituting, comprising, evidencing, setting forth, summarizing, or characterizing, either directly or indirectly, in whole or in part.
- C. As used herein, the term “COMMUNICATION(S)” means every manner or method of disclosure, exchange of information, statement or discussion between or among two or more PERSONS, including but not limited to, face-to-face and telephone conversations, correspondence, memoranda, telegrams, telexes, email messages, transcribed voice-mail messages, text messages, meetings, discussions, releases, statements, reports, publications, or any recordings or reproductions.
- D. As used herein, “DEFENDANT” means Federal Government Defendants and any and all of Defendants’ current or former principals, officers, directors, employees, agents, attorneys, consultants, and other representatives.
- E. As used herein “PRESIDENT” means the President, Vice President, Executive Office of the President, the President’s Cabinet, Presidential advisory boards, Presidential and Vice Presidential task forces, White House Offices including but not limited to the White House Center for Environmental Quality, the White House Office of Management and Budget, the White House Office of Science and Technology Policy and any and all

current and former principals, employees, agents, attorneys, consultants and other representatives of the PRESIDENT.

- F. As used herein, the term “INTERVENOR DEFENDANTS” shall refer to defendants AMERICAN PETROLEUM INSTITUTE, NATIONAL ASSOCIATION OF MANUFACTURERS, AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS, formerly known as National Petroleum Refiners Association (1961-1998), and their current or former principals, officers, directors, employees, agents, attorneys, consultants, and other representatives.
- G. As used herein, the term “PERSON” means all individuals, entities, firms, organizations, groups, committees, regulatory agencies, governmental entities, business entities, corporations, partnerships, trusts and estates.
- H. As used herein, the term “CLIMATE CHANGE” shall mean any change in the state of the climate lasting for an extended period of time. In other words, the term “CLIMATE CHANGE” includes changes in surface and ocean temperature, precipitation, or wind patterns, among other effects, that occur over several decades or longer, attributed directly or indirectly to human activity. The term “CLIMATE CHANGE” shall include ocean acidification, sea level rise, and other impacts resulting from the increased concentration of greenhouse gases in the atmosphere and oceans. “CLIMATE CHANGE” also has been called inadvertent weather modification, the greenhouse effect, CO₂ problem, carbon dioxide problem, climatic changes, global warming, global change, global heating, atmospheric pollution by carbon dioxide or other greenhouse gases, and dilution of carbon 14 by fossil carbon.

II. INSTRUCTIONS

- A. Please produce and permit the inspection and copying of the DOCUMENTS described below which are in DEFENDANT'S possession, custody, or control, or in the possession, custody, or control DEFENDANT'S attorneys, consultants, agents, or representatives.
- B. In producing the DOCUMENTS demanded, each DEFENDANT shall segregate those documents by each request set forth herein.
- C. For any claim that a DOCUMENT which a DEFENDANT is required to produce in response to any of these demands is privileged, such DEFENDANT will:
 - a. Identify the DOCUMENT'S title and general subject matter;
 - b. State the DOCUMENT'S date;
 - c. Identify the DOCUMENT'S author(s);
 - d. Identify the PERSON or PERSONS for whom the DOCUMENT was prepared or to whom the DOCUMENT was sent;
 - e. State the nature of the privilege claimed; and
 - f. State in detail each and every fact upon which such DEFENDANT bases a claim of privilege.
- D. The words "and" and "or" shall be construed in the conjunctive or disjunctive, whichever is most inclusive.
- E. The singular form shall include the plural form and vice versa.
- F. The present tense shall include the past tense and vice versa.
- G. If any DOCUMENT cannot be produced in full, produce it to the extent possible, indicating what information is being withheld and the reason such information is being withheld.
- H. If a DOCUMENT once existed, but has been lost, destroyed, no longer exists, or is no

longer in a DEFENDANT'S possession, custody, or control, identify each such DOCUMENT and separately state the details concerning the loss or destruction of the DOCUMENT, or the name and address of the current or last known custodian of any such document, if known to you.

- I. Every REQUEST FOR PRODUCTION herein shall be deemed a continuing Request for Production, and each DEFENDANT is to supplement its answers promptly if such DEFENDANT obtains responsive DOCUMENTS which add to such DEFENDANT'S initial production.
- J. REQUESTS FOR PRODUCTION are not intended to be duplicative. All requests should be responded to fully and to the extent not covered by other requests. If there are DOCUMENTS that are responsive to more than one request, please note and produce each such DOCUMENT in response to the first request.

III. DOCUMENTS

- A. Each DOCUMENT that identifies the organizational structure of the Executive Office of the President of the United States as it REFERS, RELATES, REGARDS, OR PERTAINS to work in whole or in part on the issue of CLIMATE CHANGE.
- B. Each DOCUMENT that identifies the organizational structure of the White House Council on Environmental Quality ("CEQ") as it REFERS, RELATES, REGARDS, OR PERTAINS to work in whole or in part on the issue of CLIMATE CHANGE.
- C. Each DOCUMENT that identifies the organizational structure of the White House Office of Science and Technology Policy ("OSTP") as it REFERS, RELATES, REGARDS, OR PERTAINS to work in whole or in part on the issue of CLIMATE CHANGE.
- D. Each DOCUMENT that identifies the organizational structure of the White House Office

of Management and Budget (“OMB”) as it REFERS, RELATES, REGARDS, OR PERTAINS to work in whole or in part on the issue of CLIMATE CHANGE.

- E. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO appointees of the Trump Administration who would be, as part of his or her duties, working on the issue of CLIMATE CHANGE.
- F. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the Trump Administration directing the removal of government officials or employees who had been working in the administration of former President Barack Obama who, as part of their duties, were working on the issue of CLIMATE CHANGE.
- G. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the removal of environmental information and information on the issue of CLIMATE CHANGE from government websites during the Trump Administration.
- H. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO directing agencies to curb their dissemination of information on the issue of CLIMATE CHANGE to the public including restrictions on the use of social media during the Trump Administration.
- I. Each DOCUMENT within the possession of the current PRESIDENT that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS concerning the issue of CLIMATE CHANGE impacts including but not limited to, observations or predictions of CLIMATE CHANGE and effects on permafrost, sea level rise, flooding, forest degradation, ocean acidification, air quality, public health and public health disparities,

extreme or unusual weather conditions, sea ice conditions and the impact of those changes on oil drilling operations.

- J. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the issue of CLIMATE CHANGE from John Holdren to the Executive Office of the President during the time frame March 2009 and January 2017.
- K. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the issue of CLIMATE CHANGE from Dr. Fabien Laurier, former Policy Advisor for Climate Adaptation, and Senior Policy Advisor and Director of National Climate Assessment, to the PRESIDENT during the time frame December 2013 and January 2016.
- L. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the issue of CLIMATE CHANGE from Timothy “Tim” Stryker, Program Director, U.S. Group on Earth Observations Program, to the PRESIDENT during the time frame January 2012 and January 20, 2017.
- M. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the issue of CLIMATE CHANGE between John Holdren and IPCC participant Christopher “Chris” Field during the time frame January 1, 2015 and January 20, 2017.
- N. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the issue of CLIMATE CHANGE between the President's Council of Advisors on Science and Technology (“PCAST”), its members, and the PRESIDENT during the time frame 2011 and 2013, including, but not limited to,
 - a. DOCUMENTS about a meeting with President Obama on November 30, 2012,

and

- b. COMMUNICATIONS with the Director of White House Office of Science and Technology Policy.
- O. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO any DOCUMENTS relating to the change in plans from the November 7, 2011 draft proposal which the Environmental Protection Agency (“EPA”) sent to or from the OMB regarding the EPA’s decision not to impose regulations on existing emitters of greenhouse gases.
- P. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the issue of CLIMATE CHANGE between former EPA Administrator Lisa P. Jackson and the PRESIDENT, including, but not limited to, emails from the address windsor.richard@epa.gov, during the time frame January 1, 2009 and February 15, 2013.
- Q. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the issue of CLIMATE CHANGE between former EPA Administrator Gina McCarthy and the PRESIDENT during the time frame January 1, 2013 and January 20, 2017.
- R. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the issue of CLIMATE CHANGE between David McIntosh and the PRESIDENT during the time frame January 1, 2009 and June 10, 2011.
- S. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the issue of CLIMATE CHANGE between Dan Costa, National Program Director, Air, Climate, and Energy Strategic Research Program, and the

PRESIDENT during the time frame January 1, 2009 and January 20, 2017.

- T. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the issue of CLIMATE CHANGE between Tim Watkins, Deputy Director, Air, Climate, and Energy Strategic Research Program, and the PRESIDENT during the time frame January 1, 2009 and January 20, 2017.
- U. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the issue of CLIMATE CHANGE from former DOE Secretary Steven Chu to the PRESIDENT during the time frame January 21, 2009 through April 22, 2013.
- V. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the issue of CLIMATE CHANGE from former DOE Secretary Dr. Ernest Moniz to the PRESIDENT during the time frame April 22, 2013 and Dec. 31, 2016.
- W. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the issue of CLIMATE CHANGE from Brian Deese, Advisor to the President, Deputy Director of the Office of Management and Budget, Acting Director of the Office of Management and Budget, and Deputy Director of the National Economic Council, to the PRESIDENT during the time frame January 1, 2009 and January 20, 2017.
- X. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS from the Obama Administration to the Trump Administration on the issue of CLIMATE CHANGE.
- Y. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO the issue

of CLIMATE CHANGE impacts that result from atmospheric concentrations of carbon dioxide in the atmosphere exceeding 350 parts per million.

Z. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO the issue of CLIMATE CHANGE impacts that result from atmospheric concentrations of carbon dioxide in the atmosphere exceeding 400 parts per million.

AA. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO the issue of CLIMATE CHANGE impacts that result from atmospheric concentrations of carbon dioxide in the atmosphere exceeding 450 parts per million.

BB. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO the issue of CLIMATE CHANGE impacts that result from a global temperature increase of 1.5 degrees Celsius or more.

CC. Each DOCUMENT and COMMUNICATION from the PRESIDENT that REFERS, RELATES, REGARDS, OR PERTAINS TO the issue of CLIMATE CHANGE science and research including, but not limited to:

- a. National Academy of Science research on safe levels of atmospheric concentrations of carbon dioxide in the atmosphere.
- b. Science and research programs authorized under the 1987 Global Climate Protection Act (P.L. 100-204) and the United States Global Change Research Program;
- c. Monitoring of carbon dioxide (“CO₂”) levels at Keeling Lab;
- d. DOCUMENTS referencing the National Academy of Sciences and National Research Council work on the issue of CLIMATE CHANGE, including, but not limited to, “Changing Climate: Report of the Carbon Dioxide Assessment

Committee” (1983);

- e. Research conducted by the National Academy of Sciences Climate Research Board, including, but not limited to, reports entitled “NAS Energy and Climate Studies in Geophysics (1977),” and “Carbon Dioxide and Climate: A Scientific Assessment (1979)”;
 - f. Research and the work of Jules Charney, Roger Revelle (including, but not limited to, the 1965 “Restoring the Quality of Our Environment—Atmospheric Carbon Dioxide”), Verner E. Suomi, and Bill Nierenberg.
 - g. DOCUMENTS referencing “The Report of the Air Conservation Commission of the American Association for the Advancement of Science (1965).”
 - h. DOCUMENTS referencing “The Carbon Dioxide Theory of Climate Change (1955)”.
- DD. Each COMMUNICATION from the PRESIDENT that REFERS, RELATES, REGARDS, OR PERTAINS TO GAO Reports that REFER, RELATE OR PERTAIN TO the issue of CLIMATE CHANGE during the time frame 1977-2016.
- EE. Each DOCUMENT and COMMUNICATION between PERSONS with the George H.W. Bush Administration and former EPA Administrator William K. Reilly that REFERS, RELATES, REGARDS, OR PERTAINS TO the issue of CLIMATE CHANGE.
- FF. Each DOCUMENT and COMMUNICATION to or from the PRESIDENT that REFERS, RELATES, REGARDS, OR PERTAINS TO Congressional hearings about the issue of CLIMATE CHANGE.
- GG. Each DOCUMENT and COMMUNICATION regarding the testimony of Dr.

James Hansen, including but not limited to, Dr. Hansen's testimony to Congress in 1984, 1988, 1989, and 2007.

HH. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO modification by the Office of Management and Budget of scientific statements and findings regarding the issue of CLIMATE CHANGE, including, but not limited to, statements and findings from the National Research Council, the National Academy of Sciences, and the National Aeronautics and Space Administration.

II. Each DOCUMENT and COMMUNICATION to or from the PRESIDENT from the time frame of prior to 2007 that REFERS, RELATES, REGARDS, OR PERTAINS TO policy and analysis on the regulation of industrial CO₂ as a pollutant under the Clean Air Act.

JJ. Each DOCUMENT and COMMUNICATION from the PRESIDENT, including, but not limited to, the White House Office of Science and Technology Policy ("OSTP") that REFERS, RELATES, REGARDS, OR PERTAINS TO reports and findings produced by DEFENDANT federal agencies that REFER TO the issue of CLIMATE CHANGE, including, but not limited to:

- a. DOCUMENTS referencing EPA's "Policy Options for Stabilizing Global Climate" (1990);
- b. DOCUMENTS referencing the Congressional Office of Technology Assessment document "Changing By Degrees: Steps to Reduce Greenhouse Gases" (1991);
- c. DOCUMENTS referencing EPA's Social Cost of Carbon;
- d. DOCUMENTS referencing EPA's "Endangerment and Cause or Contribute

Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act” (74 FR 66495) (2009), not including information available through the public record; and

- e. DOCUMENTS referencing the Department of Homeland Security’s 2014 Climate Action Plan.
- KK. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS OR PERTAINS TO the United States Global Change Research Program National Assessments (“National Assessment”), including, but not limited to, COMMUNICATIONS between the PRESIDENT and any representative of the Competitive Enterprise Institute (“CEI”) or Congressional Offices, including the offices of Senator Inhofe.
- LL. Each DOCUMENT that and COMMUNICATION from the PRESIDENT that REFERS, RELATES, REGARDS, OR PERTAINS TO the 1965 Report of President Lyndon Johnson’s Scientific Advisors, “Restoring the Quality of Our Environment.”
- MM. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the CEQ Annual Reports to Congress during the time frame of 1970-1997 concerning the issue of CLIMATE CHANGE.
- NN. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO carbon dioxide emission reduction targets under the George H.W. Bush Administration.
- OO. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the alteration of EPA reports, memorandum, and publications that REFERS, RELATES, REGARDS, OR PERTAINS TO CLIMATE

CHANGE during the George W. Bush Administration, including, but not limited to, EPA's State of the Environment Report in 2003 and the 2002 U.S. Climate Action Report.

PP. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO CLIMATE CHANGE science and policy from OMB head Richard Darman under the George H.W. Bush Administration.

QQ. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the issue of CLIMATE CHANGE to or from the George C. Marshall Institute, or Marshall Institute, during the time frame 1989 and 1995 including but not limited to each COMMUNICATION between the PRESIDENT, including but not limited to OMB, and Fred Singer, Fred Seitz, Bill Nierenberg, or Robert Jastrow.

RR. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO policy and scientific analysis from the PRESIDENT related to Intergovernmental Panel on Climate Change Assessments 1, 2, 3, 4, and 5.

SS. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the issue of CLIMATE CHANGE related to the United Nations Framework Convention on Climate Change (“UNFCCC”), including, but not limited to:

- a. COMMUNICATIONS from representatives of the George H.W. Bush Administration in preparation for the 1992 United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro, or the “Earth Summit”;

- b. COMMUNICATIONS from representatives of the George H.W. Bush Administration following the 1992 United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro, or the “Earth Summit”
 - c. COMMUNICATIONS from representatives of the Clinton Administration in preparation for the Kyoto meeting in 1997;
 - d. COMMUNICATIONS from representatives of the Clinton Administration following the Kyoto meeting in 1997;
 - e. COMMUNICATIONS from representatives of the George W. Bush Administration in preparation for UNFCCC 7th Conference of the Parties held from 29 October 2001 through 9 November 2001 in Marrakech;
 - f. COMMUNICATIONS from representatives of the George W. Bush Administration following UNFCCC 7th Conference of the Parties held from 29 October 2001 through 9 November 2001 in Marrakech;
 - g. COMMUNICATIONS between the PRESIDENT and former United States Ambassador to the United Nations Susan Rice during the time frame January 22, 2009 and August 2, 2013;
 - h. COMMUNICATIONS between the PRESIDENT and former United States Ambassador to the United Nations Samantha Power during the time frame August 2, 2013 and January 20, 2017; and
 - i. COMMUNICATIONS between Paul Elliot and the PRESIDENT in preparation for the UNFCCC meeting in Copenhagen in December 2009.
- TT. Each DOCUMENT and COMMUNICATION from the PRESIDENT that REFERS, RELATES, REGARDS, OR PERTAINS TO the June 27-30, 1988 Toronto

Conference on Climate Change.

- UU. Each DOCUMENT and COMMUNICATION from the PRESIDENT that REFERS, RELATES, REGARDS, OR PERTAINS TO the Second North American Conference on Preparing for Climate Change, Washington, D.C. December 6-8, 1988 including, but not limited to, each COMMUNICATION between the PRESIDENT and any of the INTERVENOR DEFENDANTS.
- VV. Each DOCUMENT and COMMUNICATION between the PRESIDENT and any of the INTERVENOR DEFENDANTS and their members that REFERS, RELATES, REGARDS, OR PERTAINS TO the issue of CLIMATE CHANGE, including, but not limited to:
- a. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the creation, administration, funding, or mandate of the United States Global Change Research Program;
 - b. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the EPA DOCUMENT “Policy Options for Stabilizing Global Climate” (1990);
 - c. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the 1997 World Petroleum Conference in Buenos Aires;
 - d. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the Global Climate Coalition.
 - e. Each COMMUNICATION between CEQ staff members (such as Philip Cooney) and any of the INTEVENOR DEFENDANTS (including Randy Randol and

William “Bill” O’Keefe);

- f. Each COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the Competitive Enterprise Institute petition and lawsuit against the Bush Administration White House Office of Science and Technology Policy and the National Science and Technology Council to stop the release of the first National Assessment;
- g. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO Mobil Oil Executive Dayton H. Clewell’s work on the Presidential Council on Oceans and Atmosphere;
- h. Each COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO EPA Proposals in 1989 to Curb Global Warming Pollution;
- i. Each COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the Clinton Administration’s “Climate Action Plan” (1993);
- j. Each COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the Clinton BTU Tax Plan, also known as a carbon tax;
- k. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the “Clear Skies” proposal announced in February 2002, including COMMUNICATIONS to and from the Vice President’s National Energy Policy Development Group, also known as the Cheney Task Force;
- l. Each COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the staffing of positions under the George W. Bush Administration as such positions relate to the issue of CLIMATE CHANGE;

- m. Each COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the removal of personnel hired under the Clinton Administration as the positions held by such personnel relate to the issue of CLIMATE CHANGE;
 - n. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the George W. Bush Administration's Climate Science Research Program, Climate Change research initiative, Climate Science Technology Program, and Committee on Climate Change Science and Technology Integration;
 - o. Each DOCUMENT AND COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO United States scientific positions, involvement, and representation at meetings of the United Nations Framework Convention on Climate Change;
 - p. Each DOCUMENT AND COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO United States scientific positions, involvement, and representation at meetings of the Intergovernmental Panel on Climate Change; and
 - q. Each COMMUNICATION REFERS, RELATES, REGARDS, OR PERTAINS TO scientific findings and conclusions in the Intergovernmental Panel on Climate Change Assessments 1, 2, 3, 4, and 5.
- WW. Each DOCUMENT and COMMUNICATION from the PRESIDENT that REFERS, RELATES, REGARDS, OR PERTAINS TO a carbon tax and/or fee, or other carbon pricing mechanisms.

XX. Each DOCUMENT and COMMUNICATION from the PRESIDENT that REFERS, RELATES, REGARDS, OR PERTAINS TO CLIMATE CHANGE legislation and legislation impacting the development, expansion, and consumption of fossil fuels including, but not limited to:

- a. The Climate Stewardship Act S. 139 (2003-2004), also known as the McCain-Lieberman bill;
- b. The 2005 Climate Stewardship Act;
- c. The Energy Policy Act of 2005;
- d. The 2007 Climate Stewardship and Innovation Act;
- e. The Lieberman-Warner Climate Security Act of 2007; and
- f. The Waxman-Markey American Clean Energy and Security Act of 2009.

YY. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the position of the Trump Administration on the Paris Agreement, an agreement within the United Nations Framework Convention on Climate Change dealing with greenhouse gases emissions reduction, climate adaptation, and finance beginning in 2020.

ZZ. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS between any representative of the Trump Administration and the Canadian government regarding the Keystone XL Pipeline.

AAA. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS between any representative of the Trump Administration and TransCanada regarding the Keystone XL Pipeline.

BBB. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO

COMMUNICATIONS between any representative of the Trump Administration and Energy Transfer Partners regarding the Dakota Access Pipeline.

CCC. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS between any representative of the Trump Administration and any nongovernmental parties regarding Executive Orders, Presidential Memoranda, or Proclamations that impact fossil fuel pipelines, fossil fuel infrastructure, or the extraction, transportation, or consumption of fossil fuels, including, but not limited to:

- a. Presidential Memorandum Regarding Construction of the Keystone XL Pipeline (January 24, 2017);
- b. Presidential Memorandum Regarding Construction of the Dakota Access Pipeline (January 24, 2017);
- c. Presidential Memorandum Regarding Construction of American Pipelines (January 24, 2017);
- d. Presidential Memorandum Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing (January 24, 2017);
- e. Executive Order Expediting Environmental Reviews and Approvals For High Priority Infrastructure Projects (January 24, 2017);
- f. Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017); and
- g. Any draft Executive Orders, Presidential Memoranda, or Proclamations.

DDD. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS between any representative of the Trump Administration and any parties outside of the PRESIDENT regarding House Joint Resolution 38, signed into law

February 16, 2017.

Dated: March 7, 2017

/s/ Julia A. Olson
JULIA A. OLSON (OR Bar 062230)
JuliaAOlson@gmail.com
WILD EARTH ADVOCATES
1216 Lincoln Street
Eugene, OR 97401
Tel: (415) 786-4825

Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of March, 2017, I have served the foregoing Plaintiffs' First Request for Production of Documents and Things to Defendants The Executive Office of the President and President Donald Trump by email on the following counsel for all parties.

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Marissa Piropato
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Dated: March 7, 2017

/s/ Julia A. Olson
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Attorney for Plaintiffs

Exhibit 2 to Declaration of Sean C. Duffy

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

KELSEY CASCADIA ROSE JULIANA,)
et al.,)
Plaintiffs,)
v.) No. 6:15-CV-1517-TC
THE UNITED STATES OF AMERICA,)
et al.,)
Defendants.)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JUDGE COFFIN

March 8, 2017

Wednesday

10:05 A.M.

-o0o-

Jan R. Duiven, CSR, FCRR, CRC

CC Court Reporting

172 East 8th Avenue

Eugene, Oregon 97401

541/485-0111

1 MS. PIROPATO: And, your Honor --

2 THE COURT: Let me ask one more
3 question before you answer or respond. What about
4 the document request?

5 MS. PIROPATO: Your Honor, this is
6 Marissa Piropato for the United States. Good
7 morning.

8 THE COURT: Good morning.

9 MS. PIROPATO: We were served
10 document requests, I believe, February 21st. We
11 quickly transmitted those document requests to
12 NARA. Most of those subject document requests,
13 which -- the ones -- the February 21st requests,
14 not the ones that we received last night at two
15 a.m. -- and we can discuss those if you would
16 like -- deal with documents that are subject to
17 executive privilege.

18 There's a process that NARA has in
19 place over which we have no control that addresses
20 requests for documents where executive privilege
21 is at issue. So what we did, because this
22 specific (phone cuts out) is not in our hands, we
23 got the process started right away. We asked NARA
24 to contact the respective presidential libraries.
25 That is the libraries of President Reagan,

1 President Bush I, President Clinton, and President
2 George H.W. -- George W. Bush to release those
3 documents to the White House and the incumbent
4 White House, and let me explain what I mean by
5 that.

6 When we have executive privilege
7 involved in the NARA documents, there are two sets
8 of reviewers, except in the case of President
9 Reagan. They get -- those respective reviewers,
10 the representatives -- or the representatives of
11 the two Bush presidents and President Clinton, get
12 to review the documents for 60 days to determine
13 whether privilege is applicable. It's the first
14 30-day period, and then they get an automatic
15 30-day renewal.

16 The incumbent White House also gets
17 that same 60-day period to review documents for
18 executive privilege. And the relevant statute is
19 44 USC section 228 [sic] contemplates, in fact,
20 the 60-day process.

21 So we immediately got that process
22 in motion. It is now in the hands of the
23 respective White Houses, and we told plaintiffs
24 we'll keep them apprised of what happens, and once
25 we understand what the status of the documents

1 are, we will let them know.

2 We have a very well-established
3 process in NARA that we're told that works very
4 well. This is not about delay. It's about a
5 process that's set in regulation that we are
6 following.

7 So I want to be clear there's only
8 two really discovery -- that were on the table
9 that -- one are the request for admissions and my
10 colleague, Mr. Dykema, explained the practical
11 difficulties we're dealing with. And then with
12 respect to the request for production, we very
13 quickly moved to get the process in motion to make
14 the documents available should privilege be waived
15 by the respective White Houses.

16 You know, just as a larger matter,
17 we are not trying to delay this case. There are
18 an extraordinary number of experts, documents,
19 requests for admissions, interrogatories, and
20 depositions that plaintiffs have been proposing in
21 their schedule. We have suggested two years is
22 appropriate and, in fact, I think it's very
23 aggressive given the scope of this case --

24 THE COURT: You have --

25 MS. PIROPATO: -- and the scope of

Exhibit 3 to Declaration of Sean C. Duffy

March 24, 2017

Sean C. Duffy

Marissa Piropato

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

NATURAL RESOURCES SECTION

601 D Street NW

Washington, DC 20004

sean.c.duffy@usdoj.gov

Marissa.piropato@usdoj.gov

**Re: *Juliana v. United States*, 6:15-cv-01517-TC, Plaintiffs' meet and confer
notice pursuant to L.R. 30-2 on notice for depositions**

Dear Counsel,

Pursuant to Local Rule 30-2, Plaintiffs hereby seek to set mutually convenient dates, times, and places for deposition of the following witnesses:

1. Rex Tillerson, Secretary of State
2. Scott Pruitt, Administrator, EPA
3. Rick Perry, Secretary of Energy
4. Ryan Zinke, Secretary of Interior
5. C. Mark Eakin, Coordinator of NOAA's Coral Reef Watch program,
Satellite Oceanography & Climatology Division Marine Ecosystems &
Climate Branch
6. Michael Kuperberg, Executive Director U.S. Global Change Research
Program, OSTP
7. Rule 30(b)(6) witness for Executive Office of the President
8. Rule 30(b)(6) witness for Council on Environmental Quality
9. Rule 30(b)(6) witness for Office of Management and Budget
10. Rule 30(b)(6) witness for Office of Science and Technology Policy
11. Rule 30(b)(6) witness for Department of Energy
12. Rule 30(b)(6) witness for Department of Interior
13. Rule 30(b)(6) witness for Department of Agriculture
14. Rule 30(b)(6) witness for Department of Defense
15. Rule 30(b)(6) witness for Department of Commerce
16. Rule 30(b)(6) witness for Department of Transportation
17. Rule 30(b)(6) witness for Department of State
18. Rule 30(b)(6) witness for Environmental Protection Agency

Please confer with your clients to propose dates for depositions during the month of May. We propose a call on April 30, 2017 to discuss dates. We intend to notice depositions by April 5, 2017.

Sincerely,

/s/ Julia A. Olson

Julia A. Olson
Counsel for Plaintiffs
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cc: Philip Gregory
Daniel Galpern

Exhibit 4 to Declaration of Sean C. Duffy

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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

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

Plaintiffs,

v.

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

Federal Defendants.

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

PLAINTIFFS' REQUESTS FOR
PRODUCTION OF DOCUMENTS TO
DEFENDANT UNITED STATES
DEPARTMENT OF STATE

PROPOUNDING PARTIES: PLAINTIFFS

RESPONDING PARTIES: DEFENDANT UNITED STATES DEPARTMENT OF STATE

SET NO: FOUR

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure (“FRCP”), Plaintiffs request Defendant United States Department of State to produce the documents and materials specified below, within thirty (30) days of service, or at such other time and place, or in such other manner, as may be mutually agreed upon by the Parties. Production of documents shall be in accordance with the Instructions and Definitions set forth below and FRCP 34.

I. DEFINITIONS

A. As used herein, the terms “DOCUMENT” or “DOCUMENTS” mean any kind of written, graphic, or recorded matter, however produced or reproduced, of any kind or description, whether sent, received, or neither, including drafts, originals, non-identical copies, and information stored magnetically, electronically, photographically, or otherwise. As used herein, the terms “DOCUMENT” or “DOCUMENTS” include, but are not limited to, studies, papers, books, accounts, letters, diagrams, pictures, drawings, photographs, correspondence, telegrams, cables, text messages, emails, memoranda, notes, notations, work papers, intra-office and inter-office COMMUNICATIONS, contracts, financial agreements, grants, proposals, transcripts, minutes, orders, reports, recordings, documentation of telephone or other conversations, interview notes, committee minutes, meeting minutes, affidavits, slides, statements, summaries, opinions, indices, analyses, publications, policies, questionnaires, answers to questionnaires, statistical records, ledgers, journals, lists, logs, tabulations, charts, graphs, maps, surveys, data sheets, computer printouts, tapes, discs, microfilm, and all other

records or COMMUNICATIONS kept, regardless of the title, author, or origin. As used herein, the terms “DOCUMENT” or “DOCUMENTS” also include, but are not limited to, COMMUNICATIONS to, between, and among members, directors, employees, contractors, agents, or representatives.

B. As used herein, the phrase “REFERS, RELATES, REGARDS, OR PERTAINS TO” means containing, alluding to, responding to, commenting upon, discussing, showing, disclosing, explaining, mentioning, analyzing, constituting, comprising, evidencing, setting forth, summarizing, amending, or characterizing, either directly or indirectly, in whole or in part.

C. As used herein, the term “DEPARTMENT OF STATE,” means Defendant United States Department of State and shall refer to any and all current and former principals, employees, agents, attorneys, consultants, ambassadors, consuls, secretaries, special envoys, coordinators, advisers, and other representatives of the United States Department of State, including all offices, bureaus, agencies, departments, and programs within the United States Department of State.

D. As used herein, “FEDERAL DEFENDANTS” means the defendants in this action, including: The UNITED STATES OF AMERICA; DONALD TRUMP, in his official capacity as President of the United States; The OFFICE OF THE PRESIDENT OF THE UNITED STATES; CHRISTY GOLDFUSS and any Successor, in her official capacity as Director of Council on Environmental Quality; JOHN MICHAEL MULVANEY, in his official capacity as Director of the Office of Management and Budget; DR. JOHN HOLDREN and any Successor, in his official capacity as Director of the Office of Science and Technology Policy; The UNITED STATES DEPARTMENT OF ENERGY; JAMES RICHARD PERRY, in his official capacity as Secretary of Energy; The UNITED STATES DEPARTMENT OF THE

INTERIOR; RYAN ZINKE, in his official capacity as Secretary of Interior; The UNITED STATES DEPARTMENT OF TRANSPORTATION; ELAINE CHAO, in her official capacity as Secretary of Transportation; The UNITED STATES DEPARTMENT OF AGRICULTURE; MICHAEL YOUNG, in his official capacity as Acting Secretary of Agriculture; The UNITED STATES DEPARTMENT OF COMMERCE; WILBUR ROSS, in his official capacity as Secretary of Commerce; The UNITED STATES DEPARTMENT OF DEFENSE; JAMES NORMAN MATTIS, in his official capacity as Secretary of Defense; The UNITED STATES DEPARTMENT OF STATE; REX TILLERSON, in his official capacity as Secretary of State; The UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; EDWARD SCOTT PRUITT, in his official capacity as Administrator of the EPA, and any and all of each FEDERAL DEFENDANT's current or former principals, predecessors, officers, directors, employees, agents, attorneys, consultants, and other representatives.

E. As used herein, the term "INTERVENOR DEFENDANTS" shall refer to defendants AMERICAN PETROLEUM INSTITUTE, NATIONAL ASSOCIATION OF MANUFACTURERS, AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS, previously referred to National Petrochemical & Refiners Association and National Petroleum Refiners Association, and their current or former principals, officers, directors, employees, agents, attorneys, consultants, and other representatives.

F. As used herein, the terms "AMERICAN PETROLEUM INSTITUTE" or "API" shall refer to Intervenor Defendant American Petroleum Institute, and to all of its current and former employees, agents, officers, directors, representatives, consultants, affiliates, members, accountants, and attorneys, including any PERSON who has served in any such capacity at any time.

G. As used herein, the term “NATIONAL ASSOCIATION OF MANUFACTURERS” or “NAM” shall refer to Intervenor Defendant National Association of Manufacturers, and to all of its current and former employees, agents, officers, directors, representatives, consultants, affiliates, members, accountants, and attorneys, including any PERSON who has served in any such capacity at any time.

H. As used herein, the term “AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS” or “AFPM” shall refer to Intervenor Defendant American Fuel & Petrochemical Manufacturers and to all of its current and former employees, agents, officers, directors, representatives, consultants, affiliates, members, accountants, and attorneys, including any PERSON who has served in any such capacity at any time.

I. As used herein, the term “COMMUNICATION,” “COMMUNICATIONS,” or “COMMUNICATE” means every manner or method of disclosure, exchange of information, statement, or discussion between or among two or more PERSONS, including, but not limited to, face-to-face and telephone conversations, correspondence, memoranda, telegrams, telexes, email messages, transcribed voice-mail messages, text messages, meetings, discussions, releases, statements, reports, publications, or any recordings or reproductions thereof.

J. As used herein, the term “PERSON” means all individuals, entities, firms, organizations, groups, committees, regulatory agencies, governmental entities, business entities, corporations, partnerships, trusts, and estates.

K. As used herein, the term “CLIMATE CHANGE” shall mean any change in the state of the climate lasting for an extended period of time. In other words, the term “CLIMATE CHANGE” includes changes in surface and ocean temperature, precipitation, or wind patterns, among other effects, that occur over several decades or longer, attributed directly or indirectly to

human activity. The term “CLIMATE CHANGE” shall include ocean acidification, sea level rise, and other impacts resulting from the increased concentration of greenhouse gases in the atmosphere and oceans. “CLIMATE CHANGE” also has been called inadvertent weather modification, the greenhouse effect, CO₂ 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.

L. As used herein, the term “GLOBAL WARMING” shall mean the rise in global average temperatures near Earth’s surface. GLOBAL WARMING causes CLIMATE CHANGE but GLOBAL WARMING is only one aspect of CLIMATE CHANGE.

M. As used herein, the term “PREINDUSTRIAL GLOBAL AVERAGE TEMPERATURE” shall mean the 1890 global average temperature and global average atmospheric carbon dioxide concentration baselines and is the zero-point for temperature anomalies. The preindustrial era exemplifies the warmer interglacial periods of the Holocene, the era in which human civilization developed. This period is the earliest period with substantial global coverage of instrumental measurements.

N. As used herein, “ATMOSPHERIC CO₂ CONCENTRATION” shall mean the global average atmospheric CO₂ concentration that is determined after analyzing air samples that are collected around the clock from “4 baseline observatories and 8 tall towers, air samples collected by volunteers at more than 50 sites, and air samples collected regularly from small aircraft mostly in North America.” The elevation of these sampling locations varies.

O. As used herein, the term “ENERGY POLICY” is the manner in which an entity, including, but not limited to, any of the FEDERAL DEFENDANTS and any of the INTERVENOR DEFENDANTS, decide to address issues of energy development

including energy production, distribution and consumption. Attributes of ENERGY POLICY may include, but are not limited to, legislation, international treaties, subsidies, incentives, guidelines for energy conservation or exploration, taxation, or other policy techniques related to energy.

II. INSTRUCTIONS

A. Please produce and permit the inspection and copying of the DOCUMENTS described below which are in the possession, custody, or control of DEPARTMENT OF STATE, or in the possession, custody, or control of any attorney, consultant, agent, or representative of DEPARTMENT OF STATE.

B. Electronically stored information (“ESI”) shall be produced in its native form; that is, in the form in which the information was created, used, and stored by the native application employed by the producing party in the ordinary course of business. Near-native form is permitted; that is, in a form in which the item can be imported into an application without a material loss of content, structure, or functionality as compared to the native form.

Compressed native files must be extracted and processed prior to delivery, including metadata which must be submitted with the corresponding native file. Metadata should be extracted from the native files and submitted with a corresponding load file. The parties may produce information items as single page Tagged Image File Format (“TIFF”) image files when practical to do so, such as in the case of producing scanned paper records or native files requiring redaction. Each TIFF file must be accompanied by a multi-page text load file.

C. For any DOCUMENT that DEPARTMENT OF STATE is required to produce in response to any of these requests, if such DOCUMENT is privileged, then DEPARTMENT OF STATE will:

- a. Identify the title and general subject matter of the DOCUMENT;
 - b. State the date of the DOCUMENT;
 - c. Identify the author(s) of the DOCUMENT;
 - d. Identify the PERSONS for whom the DOCUMENT was prepared or to whom the DOCUMENT was sent;
 - e. State the nature of the privilege claimed; and
 - f. State in detail each and every fact upon which DEPARTMENT OF STATE bases a claim of privilege for the DOCUMENT.
- D. The words “and” and “or” shall be construed in the conjunctive or disjunctive, whichever is most inclusive.
- E. The singular form shall include the plural form and vice versa.
- F. The present tense shall include the past tense and vice versa.
- G. If any DOCUMENT cannot be produced in full, produce the DOCUMENT to the extent possible, indicating what information is being withheld and the reason such information is being withheld.
- H. If a DOCUMENT once existed, but has been lost, destroyed, no longer exists, or is no longer in the possession, custody, or control of DEPARTMENT OF STATE, identify each such DOCUMENT and separately state the details concerning the loss or destruction of the DOCUMENT, or the name and address of the current or last known custodian of the DOCUMENT, if known.
- I. Every Request for Production herein shall be deemed a continuing Request for Production, and DEPARTMENT OF STATE is to supplement its response promptly if DEPARTMENT OF STATE subsequently obtains or discovers one or more responsive

DOCUMENTS.

III. REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Each DOCUMENT that identifies the organizational structure of the DEPARTMENT OF STATE as it REFERS, RELATES, REGARDS, OR PERTAINS to work in whole or in part on the issue of CLIMATE CHANGE.
2. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO Executive Order 13653: “Preparing the United States for the Impacts of Climate Change” (2013).
3. President Trump’s Executive Order: “Presidential Executive Order on Promoting Energy Independence and Economic Growth” (2017).
4. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO briefings on CLIMATE CHANGE that were given or presented to each Secretary of State from 1965 to the present.
5. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO briefings on CLIMATE CHANGE that were provided to an incoming Presidential administration from 1965 to the present, including, but not limited to, transition books, briefs, and memoranda.
6. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO briefings on CLIMATE CHANGE that were provided by an outgoing Secretary of State to an incoming Secretary of State from 1965 to the present, including, but not limited to, transition books, briefs, and memoranda.
7. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS between Secretary of State Rex Tillerson and INTERVENOR DEFENDANTS on the issue of CLIMATE CHANGE since February 1, 2017.

8. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS between Secretary of State Rex Tillerson and INTERVENOR DEFENDANTS on the issue of ENERGY POLICY since February 1, 2017.

9. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS between Secretary of State Rex Tillerson and President Donald Trump on the issue of CLIMATE CHANGE since February 1, 2017.

10. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS between Secretary of State Rex Tillerson and President Donald Trump on the issue of ENERGY POLICY since February 1, 2017.

11. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS how the impacts of CLIMATE CHANGE, including, but not limited to, sea level rise, extreme weather events, and declining Arctic sea ice, will impact oil drilling operations in United States territorial waters off of the Arctic Coast of Alaska, the Alaska North Slope, the Gulf of Mexico, Canada, Greenland, Norway, and Russia.

12. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS from 2009 to the present with any representative of TransCanada regarding the impacts on CLIMATE CHANGE of the Keystone XL Pipeline.

13. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS from 2009 to the present with any representative of the Canadian government regarding the impacts on CLIMATE CHANGE of the Keystone XL Pipeline.

14. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS with any representative of TransCanada regarding the United Nations

Climate Change Conference in Copenhagen, including, but not limited to, COMMUNICATIONS to or from Paul Elliott.

15. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the 2016 decision to lift the ban on U.S. oil exports, including, but not limited to, COMMUNICATIONS about how the decision to lift the ban on U.S. oil exports would impact U.S. oil production.

16. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS with the Global Climate Coalition between 1989 and 2002 related to international CLIMATE CHANGE negotiations.

17. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO Circular 175 memoranda that were prepared for international CLIMATE CHANGE negotiations from 1979 to the present, including the Circular 175 memoranda and supporting DOCUMENTS.

18. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the First World Climate Conference in Geneva, Switzerland from February 12-23, 1979, including, but not limited to, each COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the Declaration of the World Climate Conference, issued at the conclusion of the First World Climate Conference.

19. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO conclusions of the Villach Conferences in 1985 and 1987, including, but not limited to, DOCUMENTS regarding the participation of any FEDERAL DEFENDANT in the Villach conferences, scientific reports or other DOCUMENTS received by agency officials as background or briefing material prior to each Villach conference, COMMUNICATIONS with any INTERVENOR DEFENDANT regarding each Villach

conference, and COMMUNICATIONS about the Villach conference recommendations.

20. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the position of each of the FEDERAL DEFENDANTS on the recommendation following the conference entitled “The Changing Atmosphere: Implications for Global Security,” held in Toronto, Canada from June 27 to 30, 1988, that governments “[r]educ[e] CO₂ emission by approximately 20% of 1988 levels by the year 2005 as an initial global goal.”

21. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the FEDERAL DEFENDANTS’ preparation for, input to, participation in, or response to the conference entitled “The Changing Atmosphere: Implications for Global Security,” held in Toronto, Canada from June 27 to 30, 1988, including, but not limited to, DOCUMENTS relating to the Call to Action and Action Plan adopted at the conference, records of attendance, participation by agency personnel, and COMMUNICATIONS with any of the INTERVENOR DEFENDANTS regarding the conference or its outcomes.

22. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the environmental summit that took place at The Hague on March 11, 1989.

23. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS to or from John Sununu in 1989 pertaining to opposition by any of the FEDERAL DEFENDANTS to negotiations on a CLIMATE CHANGE treaty.

24. Each COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO United Nations General Assembly Resolution A/RES/45/212, December 21, 1990, “Protection of Global Climate for Present and Future Generations of Mankind.”

25. Each DOCUMENT and COMMUNICATION between 1991 and 1997 that

REFERS, RELATES, REGARDS, OR PERTAINS TO the position of each of the FEDERAL DEFENDANTS on or interpretation of paragraph two of the preamble to the United Nations Framework Convention on Climate Change (“UNFCCC”).

26. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the position of each of the FEDERAL DEFENDANTS at the United Nations Negotiating Committee on Climate Change meeting in Washington, D.C., in February 1991, including, but not limited to COMMUNICATIONS regarding the White House “Action Agenda.”

27. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the position of each of the FEDERAL DEFENDANTS on, and interpretation of, the following clauses of Article 3.1 of the UNFCCC: “[t]he Parties should protect the climate system for the benefit of present and future generations of humankind Accordingly, the developed country Parties should take the lead in combating climate change the adverse effects thereof.”

28. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO proposals and statements to other countries prior to the adoption of the agreed final text by each of the FEDERAL DEFENDANTS of the following clauses of Article 3.1 of the UNFCCC: “[t]he Parties should protect the climate system for the benefit of present and future generations of humankind Accordingly, the developed country Parties should take the lead in combating climate change the adverse effects thereof.”

29. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the position of each of the FEDERAL DEFENDANTS on, and interpretation of, Article 3.3 of the UNFCCC.

30. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS by each of the FEDERAL DEFENDANTS with any of the INTERVENOR DEFENDANTS prior to the adoption of the agreed final text of Article 3.3 of the UNFCCC.

31. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO scientific information underlying the position of any of the FEDERAL DEFENDANTS prior to the adoption of Article 3.3 of the UNFCCC.

32. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the position of each of the FEDERAL DEFENDANTS on Article 2 of the UNFCCC.

33. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS by each of the FEDERAL DEFENDANTS with any of the INTERVENOR DEFENDANTS prior to the adoption of the agreed final text of Article 2 of the UNFCCC.

34. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO interpretations of the meaning of Article 2 of the UNFCCC by each of the FEDERAL DEFENDANTS, including, but not limited to, interpretation of the phrases “dangerous anthropogenic interference with the climate system” and “a time-frame sufficient to allow ecosystems to adapt naturally to climate change”

35. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO interpretations of the meaning of Article 4, paragraph 2(a) of the UNFCCC by each of the FEDERAL DEFENDANTS at the time of signing.

36. Each DOCUMENT and COMMUNICATION that REFERS, RELATES,

REGARDS, OR PERTAINS TO the interpretation by each of the FEDERAL DEFENDANTS of the phrase “recognizing that the return by the end of the present decade to earlier levels of anthropogenic emissions of carbon dioxide and other greenhouse gases . . .” in Article 2 of the UNFCCC.

37. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the use of 1990 greenhouse gas emission levels as a baseline year for greenhouse gas emission reductions under the UNFCCC.

38. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the use of 2005 greenhouse gas emission levels as a baseline year for measuring United States greenhouse gas emission reductions.

39. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the position of each of the FEDERAL DEFENDANTS on the feasibility, timing, and scale of necessary greenhouse gas reductions, developed in anticipation of the United Nations Conference on Environment and Development (“UNCED”), Rio de Janeiro, June 3-14, 1992, also known as the Rio Earth Summit.

40. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the Berlin Mandate leading up to and immediately after the first conference of the Parties in Berlin, March 28 to April 7, 1995.

41. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the adequacy of commitments of Article 4, paragraph 2(a) and (b), of the UNFCCC leading up to and immediately after the first conference of the Parties in Berlin, March 28 to April 7, 1995.

42. Each COMMUNICATION that REFERS, RELATES, REGARDS, OR

PERTAINS TO the position of each of the FEDERAL DEFENDANTS regarding the achievement of United States' negotiating objectives of the 1997 UNFCCC meeting in Kyoto.

43. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO information supporting the negotiating position taken by each of the FEDERAL DEFENDANTS leading up to the 1997 UNFCCC meeting in Kyoto.

44. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO FEDERAL DEFENDANTS' goals for outcomes from the 6th Conference of the Parties, prior to January 19, 2001.

45. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the goals of each of the FEDERAL DEFENDANTS for the 6th Conference of the Parties, which occurred between January 20 and July 27, 2001.

46. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO officials of the DEPARTMENT OF STATE engaged in COMMUNICATIONS with representatives of other countries to reject the Kyoto Protocol.

47. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the decision of each of the FEDERAL DEFENDANTS to withdraw from the Kyoto Protocol, including, but not limited to COMMUNICATIONS with any of the INTERVENOR DEFENDANTS.

48. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO formal positions tabled by and statements made by any of the FEDERAL DEFENDANTS during the UNFCCC Bali Climate Change Conference in 2007, including, but not limited to, statements by DEPARTMENT OF STATE official Paula Dobriansky on December 15, 2007.

49. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the participation by any of the FEDERAL DEFENDANTS in the final plenary session of Intergovernmental Panel on Climate Change (“IPCC”) Second Assessment report in Madrid in 1995, including, but not limited to, any DEPARTMENT OF STATE communiqués referencing findings in the Second Assessment report and COMMUNICATIONS regarding the Second Assessment report’s Summary for Policymakers.

50. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO international consensus on CLIMATE CHANGE discussed in the IPCC Second Assessment report, including, but not limited to, COMMUNICATIONS regarding the phrase “the balance of evidence suggests that there is a discernable human influence on global climate.”

51. Each DOCUMENT and COMMUNICATION from January 20, 2017 to the present that REFERS, RELATES, REGARDS, OR PERTAINS TO the potential withdrawal by any of the FEDERAL DEFENDANTS from the UNFCCC.

52. Each DOCUMENT and COMMUNICATION from January 20, 2017 to the present that REFERS, RELATES, REGARDS, OR PERTAINS TO the potential withdrawal by any of the FEDERAL DEFENDANTS from the Paris Agreement.

53. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the goal of the Paris Agreement of “holding the increase in the global average temperature to well below 2° C above preindustrial levels and pursuing efforts to limit the temperature increase to 1.5° C,” including, but not limited to, COMMUNICATIONS to or from Todd Stern.

54. Each DOCUMENT and COMMUNICATION that REFERS, RELATES,

REGARDS, OR PERTAINS TO impacts from CLIMATE CHANGE that result from an ATMOSPHERIC CO₂ CONCENTRATION in the atmosphere between 350 parts per million and 400 parts per million.

55. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO impacts from CLIMATE CHANGE that result from an ATMOSPHERIC CO₂ CONCENTRATION in the atmosphere between 400 parts per million and 450 parts per million.

56. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO impacts from CLIMATE CHANGE that result from an ATMOSPHERIC CO₂ CONCENTRATION in the atmosphere exceeding 450 parts per million.

57. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO impacts from CLIMATE CHANGE that result from a global temperature increase of 1.5° Celsius or more, including comparisons between global temperature increase of 1.5° and 2° Celsius.

58. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the safe ATMOSPHERIC CO₂ CONCENTRATION.

59. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the safe level of GLOBAL WARMING above the PREINDUSTRIAL GLOBAL AVERAGE TEMPERATURE.

60. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the commitment by each of the FEDERAL DEFENDANTS to “rationalize and phase out over the medium term, inefficient fossil fuel subsidies that encourage wasteful consumption” during the G20 Summit in Pittsburgh, Pennsylvania on September 25,

2009, including, but not limited, to COMMUNICATIONS between each of the FEDERAL DEFENDANTS and each of the INTERVENOR DEFENDANTS prior to and after the announcement of this commitment.

61. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS sent or received from Susan Rice, former U.S. Ambassador to the United Nations between January 22, 2009 and August 2, 2013, on the issue of CLIMATE CHANGE.

62. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS sent or received from Susan Rice, former U.S. Ambassador to the United Nations, between January 22, 2009 and August 2, 2013, on the issue of ENERGY POLICY.

63. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS sent or received from Susan Rice, former U.S. Ambassador to the United Nations, between January 22, 2009 and August 2, 2013, on the issue of atmospheric carbon dioxide level targets (usually expressed as ppm) or GLOBAL WARMING-induced temperature change targets (usually expressed as Celsius degrees).

64. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS sent or received from Samantha Power, former U.S. Ambassador to the United Nations, between August 2, 2013 and June 11, 2015, on the issue of atmospheric carbon dioxide level targets (usually expressed as ppm) or GLOBAL WARMING-induced temperature change targets (usually expressed as Celsius degrees).

65. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO CLIMATE CHANGE relied upon in the First Biennial Report of the United States of America under the UNFCCC.

66. Each DOCUMENT and COMMUNICATION that REFERS, RELATES,

REGARDS, OR PERTAINS TO CLIMATE CHANGE relied upon in the Second Biennial Report of the United States of America under the UNFCCC.

67. Each DOCUMENT and COMMUNICATION from November 2016 to the present that REFERS, RELATES, REGARDS, OR PERTAINS TO removing DOCUMENTS from government websites, or removing entire government websites, which contain information on CLIMATE CHANGE.

68. Each DOCUMENT and COMMUNICATION from 2001 to the present that REFERS, RELATES, REGARDS, OR PERTAINS TO how employees of the DEPARTMENT OF STATE should or should not COMMUNICATE information to third parties about CLIMATE CHANGE and the impacts of CLIMATE CHANGE, including, but not limited to, the existence of CLIMATE CHANGE, the role of human activity in CLIMATE CHANGE, scientific uncertainty regarding the existence or causes of CLIMATE CHANGE, sea level rise, extreme weather events, ocean acidification, droughts, floods, and human health impacts.

69. Each COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO existing DEPARTMENT OF STATE plans, policies, strategies, or regulations pertaining to CLIMATE CHANGE that the Trump administration intends to eliminate, scale back, not enforce, or otherwise decide not to implement, from January 20, 2017 to the present.

70. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the removal of officials or employees of the DEPARTMENT OF STATE who had been working in the administration of former President Barack Obama and who, as part of their duties, were working on CLIMATE CHANGE, from January 20, 2017 to the present.

Dated: March 31, 2017

/s/ Philip L. Gregory
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CERTIFICATE OF SERVICE

I am employed in San Mateo County where service of the document referred to below occurred. I am over the age of 18 and not a party to the action. My business address is Cotchett, Pitre & McCarthy, LLP, San Francisco Airport Office Center, 840 Malcolm Road, Burlingame, CA 94010. I hereby certify that on this date, I served or caused to be served a true copy of the foregoing **Plaintiffs' Requests for Production of Documents to Defendant United States Department of State** by email to the addressees specified below.

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Exhibit 5 to Declaration of Sean C. Duffy

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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

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

Plaintiffs,

v.

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

Federal Defendants.

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

**JOINT STATUS REPORT AS OF
APRIL 3, 2017**

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

The Parties hereby submit their Joint Status Report.

1. The Intervenor Defendants' Answer

A. Plaintiffs' Section:

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

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

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

B. Intervenor Defendants' Section:

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

2. Motions to Certify and for a Stay

A. Plaintiffs' Section:

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

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

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

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

B. Federal Defendants' Section:

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

C. Intervenor-Defendants' Section:

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

3. Discovery Issues

A. Plaintiffs' Section:

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

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

Phased Discovery: Discovery will focus primarily on two aspects of the case:

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

Status of Discovery Propounded to date:

To date, Plaintiffs have propounded the following discovery:

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

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

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

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

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

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

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

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

B. Federal Defendants' Section:

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

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

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

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

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

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

Fact Discovery

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

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

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

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

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

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

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

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

Expert Discovery

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

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

C. Intervenor Defendants' Section :

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

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

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

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

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

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

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

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

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

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

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

Resolving Discovery Disputes

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

4. Scheduling

A. Plaintiffs' Section:

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

PROPOSED DATES FOR THE SCHEDULING ORDER

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

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

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

B. Defendants' Section:

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

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

C. Intervenor-Defendants’ Section:

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

DISCOVERY PLAN

A. Plaintiffs’ Section:

Initial disclosures: Plaintiffs do not believe that initial disclosures need to be exchanged.

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

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

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

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

Number of Interrogatories/Requests for Production/Requests for Admission:

Plaintiffs believe that each party should be allowed to propound the following discovery to each other party: 100 interrogatories, 200 document requests, and unlimited requests

for admission.

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

B. Defendants' Section:

As discussed above, it is premature to establish a schedule for discovery at this juncture. In light of the exceptional burden on Federal Defendants posed by these requests, discovery¹ should be held in abeyance until this Court resolves Federal Defendants' Motion for Interlocutory Appeal and Stay. Alternatively, all discovery deadlines should be moved to May 8, 2017.

C. Intervenor-Defendants' Section:

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

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

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

JOINT STATUS REPORTS

A. Plaintiffs' Section:

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

B. Federal Defendants' Section:

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

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

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

C. Intervenor-Defendants' Section:

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

Dated: April 3, 2017

By: /s/Julia A. Olson
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Dated: April 3, 2017

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ATTESTATION OF FILING

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

/s/ Julia A. Olson

JULIA A. OLSON

Exhibit 6 to Declaration of Sean C. Duffy

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

THE HON. THOMAS M. COFFIN, JUDGE PRESIDING

KELSEY CASCADIA ROSE JULIANA, et)
al.,)

Plaintiffs,)

v.)

UNITED STATES OF AMERICA, et al.,)

Defendants.)

No. 6:15-cv-01517-TC

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EUGENE, OREGON

FRIDAY, APRIL 7, 2017

PAGES 1 - 40

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1 effectively adds up to millions.

2 I mean, the recent request for production
3 propounded on the State Department alone seeks from every
4 employee within the State Department, you know, documents
5 over the course of the past five decades related to climate
6 change.

7 THE COURT: Okay.

8 MS. PIROPATO: The State Department is a large
9 entity, and they are looking into it to give me more
10 specifics in connection with a potential motion for
11 protective order.

12 But the response I got was it's unfathomable how
13 we are going to do this in a reasonable time frame because
14 we are talking about that many documents, Your Honor.

15 THE COURT: Okay. Well, my impression in
16 combining these document requests on the one hand with the
17 admissions made by the government on the other hand, and
18 this is why I asked Mr. Duffy to explain whether or not the
19 government was somehow going to try to retract some of these
20 admissions because -- and I don't know that you can
21 successfully do that, so I am not expressing an opinion on
22 that at this time.

23 But my thought was given the admissions of the
24 government that are here in the record and to summarize the
25 significance of those admissions, the government is

1 to act like we are going to respond to them. That is our
2 legal obligation. So I just want to be clear that we are
3 really being put in a pickle.

4 THE COURT: I lost you.

5 MS. PIROPATO: Oh. I am sorry.

6 I want to be clear that we are fine with meeting
7 and conferring with plaintiffs. We think it would be
8 useful. We will do so in person to the extent that everyone
9 thinks that would be the best path forward and we'll work
10 that out.

11 But I do want to emphasize, until such time as
12 there is an agreement among the parties, the United States
13 must assume that it needs to respond to the requests as
14 propounded, which is, as I said, an onerous burden. So we
15 believe we have to do the expert identification process and
16 at the same time respond to the requests so that our clients
17 are not in the position where they could be sanctioned
18 because the existing deadlines currently are within a month,
19 and that is something that hangs heavy above our clients.

20 THE COURT: Well, I will do this for you:

21 I will extend the deadlines until after you meet
22 and confer, and so -- because I don't want you to be
23 propounding answers to demands for production that maybe are
24 sliced down to -- and eliminated, and so I won't know that
25 and you won't know that until after you meet and confer.

1 And then -- so we will add that time to the deadlines that
2 have been proposed so you don't lose any time waiting for a
3 meet and confer.

4 Does that make sense?

5 MS. PIROPATO: That would be helpful. Thank you,
6 Your Honor.

7 THE COURT: Okay.

8 MR. VOLPE: It would, Your Honor. This is Frank
9 Volpe.

10 So the intervenor defendants are prepared shortly
11 to file what is essentially a motion for protective order
12 related to discovery. I take it the judge would like us to
13 wait until we have this meet and confer before we file.

14 THE COURT: Yeah, absolutely. Absolutely. See
15 what you can work out among yourselves.

16 MR. VOLPE: Okay.

17 THE COURT: And then you can file your motion if
18 it hasn't worked out to your satisfaction.

19 And I hope I have given everybody some direction
20 today because I just -- you know, right now what I am
21 presented with is a proposed schedule that is contradicted
22 by, you know, the different objectives that are being
23 pursued in discovery, and I understand the defendants'
24 practical problems in trying to meet a compressed trial
25 schedule while at the same time having to deal with a

Exhibit 7 to Declaration of Sean C. Duffy

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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

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

v.

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

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

**JOINT STATUS REPORT AS OF MAY 12,
2017**

**JOINT STATUS REPORT
AS OF MAY 12, 2017**

On May 4, 2017, counsel for the parties met and conferred for a full day in person in Portland, Oregon. The parties conferred on the following topics and hereby respectfully provide this joint status report to inform the court of the status of discovery and other pending or upcoming motions.

Defendants’ Motions for Interlocutory Appeal and Stay

On May 5, 2017, Federal Defendants filed objections to Magistrate Judge Coffin’s May 1, 2017 Findings and Recommendations (“F&Rs”). On May 9, 2017, Intervenor Defendants filed objections to the F&Rs. Plaintiffs will file their response to Federal Defendants’ Objections by May 19, 2017 and to Intervenor Defendants’ Objections by May 23, 2017, pursuant to Fed. R. Civ. P. 72 and Magistrate Judge Coffin’s Findings and Recommendations. Federal Defendants have asked the Court to expedite consideration of the objections and issue a decision by May 19, 2017. Plaintiffs oppose expedited review and Intervenor Defendants do not oppose.

On May 9, 2017, Federal Defendants filed objections to Magistrate Judge Coffin’s denial of their motion to stay and have asked the Court to expedite consideration of that motion. Plaintiffs oppose expedited review and Intervenor Defendants do not oppose. Plaintiffs will file their response to these objections on May 23, 2017.

Plaintiffs’ Requests for Production of Documents

Intervenor Defendants objected to Plaintiffs’ requests for production of documents and the parties have conferred on those requests. Plaintiffs agreed to narrow the requests to address Intervenor Defendants’ concerns of overbreadth. However, the parties disagree as to whether the requests, even when narrowed, are relevant to the claims in the case and will need to brief the issue for the Court’s resolution.

Federal Defendants have not formally served objections to Plaintiffs' requests for production of documents. Federal Defendants and Plaintiffs have conferred regarding Federal Defendants' concerns with regard to the scope of the requests for production of documents and possible claims of deliberative process and/or executive privilege. Federal Defendants agreed to produce documents related to the organizational structure of the State Department. Plaintiffs agreed to narrow their other requests temporally, to certain agency personnel, and as to types of documents.

Federal Defendants' position is that Plaintiffs have stated an intent to propound new RFPs on the Executive Office of the President, the Department of State, the Department of Defense, and the United States Department of Agriculture on May 15. Those new RFPs would supplant Plaintiffs' previous RFPs on those Federal Defendants. The parties will then meet and confer. Defendants reserve their right to assert all privileges, including deliberative process and executive privilege as appropriate. During a call with counsel on May 11, Plaintiffs stated that they needed to review Federal Defendants' objections to the initial RFPs before they could file narrowed requests. Federal Defendants offered to provide objections by June 1, after which Plaintiffs would provide narrowed requests. Following the call, Plaintiffs counter-offered to provide narrowed RFPs on May 15 if Federal Defendants would respond by June 5. Narrowed RFPs that supplant the original RFPs would render objections to the former futile. Because Federal Defendants have not yet seen the narrowed RFPs, they are unable to commit to a shortened timeline (*i.e.* June 5) for their response to such narrowed RFPs.

Plaintiffs, however, disagree with Defendants on this point and their position is that, during a call with counsel on May 11, Federal Defendants offered to provide written

responses to the requests Plaintiffs have already served by June 1. Plaintiffs then offered by May 15 to narrow the requests to which Federal Defendants need respond and offered to give Federal Defendants until June 5 to provide their written responses. After counsel initially agreed to this, Federal Defendants ultimately would not agree to this. Plaintiffs request that either: 1) Federal Defendants provide written objections to the RFPs already served by June 1; or 2) Plaintiffs send a narrowed list of those requests by May 15, to which Federal Defendants would have until June 5 to respond.

Plaintiffs have offered to go to NARA libraries to review 388 boxes of records from the Environmental Protection Agency (“EPA”) that are located in College Park, Maryland, and other boxes of documents that Federal Defendants make available at NARA facilities. Federal Defendants continue to work with NARA and will update Plaintiffs on a rolling basis as to the status of the documents and whether they can be produced even where protected and/or classified. Federal Defendants will provide Plaintiffs with an update on the timeline regarding any assertions of presidential privilege.

Depositions

Plaintiffs seek to depose cabinet level officials as well as the heads of Intervenor Defendants. All Defendants object to these depositions and will seek a protective order. The parties will need this issue resolved by the Court. Intervenor Defendants indicated that they would likely allow the individuals that filed declarations with their motion to intervene or 30(b)(6) witnesses on the topics contained therein to be deposed. Plaintiffs and Intervenor Defendants will discuss this further.

After meeting and conferring, on May 11, 2017, Plaintiffs noticed the depositions of two federal government employees: C. Mark Eakin, Coordinator of National Ocean and

Atmospheric Administration's Coral Reef Watch program, Satellite Oceanography & Climatology Division; and Michael Kuperberg, Executive Director, United States Global Change Research Program. Federal Defendants stated they would not raise the same objections to these depositions as to the cabinet level defendants but reserve the right to object on other grounds. Federal Defendants explained that these two witnesses may not be 30(b)(6) designees of the Federal Defendants, which Plaintiffs acknowledged.

Plaintiffs have provided a list of preliminary proposed topics for Rule 30(b)(6) depositions and have conferred with Defendants, who requested that the topic areas be limited. Plaintiffs will formally notice the depositions before the end of May. All Defendants reserve all objections until they are able to review the formal 30(b)(6) notices of deposition.

The Federal Defendants intend to depose each of the named Plaintiffs for purposes, among others, of exploring each named Plaintiff's standing.

Plaintiffs' Request for Admissions

Federal Defendants and Plaintiffs have previously conferred on the Requests for Admission to the EOP and EPA. Responses to the Requests for Admission are due by May 31, 2017. Federal Defendants have not yet determined whether they will provide substantive responses, objections, or a combination thereof in response to the RFAs.

Intervenor Defendants are working toward providing responses to Plaintiffs' Requests for Admission on Federal Defendants' answer, which are currently due by May 18, 2017. Intervenor Defendants have moved for an extension of time until June 7, 2017, to provide those responses. Plaintiffs oppose the motion for an extension of time.

Federal Defendants have reserved the right to move to amend yet have nothing

further to report on the issue.

Experts

Plaintiffs have disclosed the names of their experts and the subject matter of their testimony. Federal Defendants have spoken to potential experts who have not had an opportunity to review Plaintiffs' experts' opinions. Thus, Federal Defendants request that Plaintiffs' experts prepare their reports before Federal Defendants are required to disclose their experts. Plaintiffs do not agree to this sequencing. Intervenor Defendants intend to defer to Federal Defendants' experts on many issues, except perhaps regarding the feasibility of the remedy, and agree that having Plaintiffs' expert reports in advance of disclosing experts and having more clarity on what topics the Federal Defendants will offer expert testimony would be beneficial. The scope of admissions by Intervenor Defendants will help determine the scope of Plaintiffs' expert reports. Plaintiffs are working expeditiously with their experts to prepare expert reports.

The parties agree that they need a schedule for Plaintiffs' expert reports, Defendants' expert reports, and expert depositions, but have not yet agreed to a schedule.

Informal Methods of Obtaining Information

Plaintiffs assert that information, documents, and data related to climate change continue to be removed from websites maintained by Federal Defendants. Federal Defendants have agreed to provide to Plaintiffs documents that Plaintiffs can no longer locate on the internet, if Plaintiffs provide a list of such documents. The parties have not agreed to a timeframe for producing such documents.

Trial Schedule

Given Plaintiffs' concerns about the urgency of climate change, Plaintiffs continue

to prepare for a late 2017 trial date, and believe that if a discovery schedule is set and adhered to by the parties, the parties will be ready for trial this year. As previously briefed, Defendants believe that this matter should be stayed and, if no stay is granted, that a trial schedule should not be set until this Court resolves some of the present discovery disputes and the scope of the issues to be decided at trial. Defendants also believe that a late 2017 trial date is wholly unrealistic given the extraordinary scope of this matter.

Protective Order

Defendants' Position:

Plaintiffs assert that a protective order is necessary to protect named Plaintiffs. Federal Defendants and Intervenor Defendants are willing to negotiate a protective order that is tailored to meet Plaintiffs' concerns. Those negotiations have not occurred nor have the parties drafted a proposed protective order to aid their discussions. Federal Defendants reiterated their willingness to confer as to the appropriate scope of any protective order during the May 4 meet and confer.

Plaintiffs' Position:

It is Plaintiffs' position that all counsel had previously agreed to protect information obtained about all the plaintiffs in discovery, such as their deposition testimony, via a protective order. During the February 7 case management conference, Defendants explicitly agreed to a protective order (ECF 115, at 43-44). During the May 4 meet and confer, the parties agreed to confer as needed to determine whether certain portions of deposition testimony Defendants wish to use in briefing, can be exempted from the protective order to avoid having entire briefs filed under seal. Defendants now appear to be walking back from what they agreed to at the February 7 case management conference and May 4 meet and

confer. Plaintiffs find this very troubling, especially in light of the threats the Plaintiffs unjustly receive as a result of being plaintiffs in this case.

Status of Discovery Propounded to Date

Plaintiffs have propounded the following discovery:

DATE PROPOUNDED	DATE RESPONSES DUE	PARTY OR PARTIES	TITLE	STATUS
12/28/2017		API	Plaintiffs' Notice of Deposition of Rex Tillerson	To be re-noticed
1/20/2017	5/31/2017	EOP, EPA	First Set of Requests for Admission to Defendants Executive Office of the President and the Environmental Protection Agency	On March 7, 2017, Plaintiffs sent additional definitions for these Requests for Admission.
2/17/2017	3/23/2017	API	Request for Production of Documents to American Petroleum Institute	On March 20, 2017, Intervenor Defendants responded without producing any documents, only serving objections. Plaintiffs will narrow. Intervenor Defendants refuse to produce even when narrowed.
2/21/2017	5/6/2017	All Federal Defendants	Requests for Production of Documents to Federal Defendants (documents from Presidential Libraries)	No production yet.
3/7/2017	4/6/2017	All Intervenor Defendants	Request for Production of Documents	Plaintiffs will narrow
3/7/2017	5/6/2017	All Federal Defendants	Second Set of Requests for Production of Documents to Federal Defendants (documents from Presidential Libraries)	No production yet.
3/7/2017	Originally 5/6/2017 Court extended to after meet and confer process	EOP, DT	Request for Production of Documents to Defendants Executive Office of the President and President Donald Trump	See RFP section above
3/17/2017	4/16/2017	API	Third Set of Requests for Production of Documents to American Petroleum Institute (re: "Wayne Tracker" emails)	
3/17/2017	Originally 5/16/2017 Court extended to after meet and confer process	All Federal Defendants	Third Set of Requests for Production of Documents to Federal Defendants (re: "Wayne Tracker" emails)	
3/24/2017	5/18/17	All Intervenor Defendants	Request for Admission to Intervenor Defendants	

3/31/2017	Originally 5/1/2017 Court extended to after meet and confer process	USDA	Request for Production of Documents to Defendant United States Department of Agriculture	See RFP section above
3/31/2017	Originally 5/1/2017 Court extended to after meet and confer process	USDOD	Request for Production of Documents to Defendant United States Department of Defense	See RFP section above
3/31/2017	Originally 5/1/2017 Court extended to after meet and confer process	State	Request for Production of Documents to Defendant United States Department of State	See RFP section above

Dated: May 12, 2017

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Certificate of Service

I hereby certify that on May 12, 2017, I filed the foregoing with the Clerk of Court via the CM/ECF system, which will provide service to all attorneys of record.

/s/ Sean C. Duffy
Sean C. Duffy

Attorney for Federal Defendants

Exhibit 8 to Declaration of Sean C. Duffy

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

THE HON. THOMAS M. COFFIN, JUDGE PRESIDING

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

Plaintiffs,)

v.)

UNITED STATES OF AMERICA, et al.,)

Defendants.)

No. 6:15-cv-01517-TC

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EUGENE, OREGON

THURSDAY, MAY 18, 2017

PAGES 1 - 33

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1 MS. OLSON: Your Honor, this is Julia Olson again.

2 I want to be clear that counsel represented during
3 our meet and confer that they have already been talking with
4 experts.

5 The intervenor defendants have as well. The
6 intervenor defendants have identified the experts of ours
7 whom they will bring experts to rebut.

8 I think that counsel can move forward with their
9 experts. Many of their experts are colleagues with our
10 experts and are very familiar with their work and what they
11 will put in their expert reports, and they have numerous
12 published papers.

13 So I hope that if we produce our expert reports by
14 July 1st that the tentative time line will become a final
15 order so that we can avoid further delay in the case.

16 THE COURT: Okay. Again, we can address this at
17 our in-person conference, and hopefully at that time it can
18 be concluded and we can give you a final order.

19 MS. OLSON: Thank you, Your Honor.

20 The next topic I wanted to address is the request
21 for production of documents and to let the court know and
22 counsel know that we have considered the written objections
23 of the intervenor defendants. We have considered the verbal
24 concerns stated by the federal defendants' counsel, and we
25 have been working to revise and narrow the requests that we

1 originally submitted, and we will, by tomorrow, have sent
2 out revised requests for production of documents to both the
3 intervenor defendants and the federal defendants.

4 And we would like to have their formal written
5 responses to those no later than 30 days from tomorrow
6 because based on our meet and confer, it's our understanding
7 that they are not going to produce documents. They are
8 going to object. They are going to assert privileges. They
9 are going to argue the documents are irrelevant. And we
10 need to tee this up for a dispute resolution by Your Honor.

11 THE COURT: All right. When you say they are
12 going to object and assert privilege, are you talking about
13 the intervenors?

14 MS. OLSON: Both the federal defendants and the
15 intervenor defendants.

16 THE COURT: All right. Well, I can't rule on that
17 in advance of seeing the objections, but what's the -- let's
18 take the intervenors first.

19 What's the intervenors' position on the request
20 for production? You haven't seen the narrowed request --

21 MR. VOLPE: Right.

22 THE COURT: -- but are you objecting to the
23 production of any documents as irrelevant?

24 MR. VOLPE: No, I am not. This is Frank Volpe on
25 behalf of the intervenors.

Exhibit 9 to Declaration of Sean C. Duffy

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

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

Plaintiffs,

v.

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

Federal Defendants.

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

PLAINTIFFS' REVISED REQUESTS FOR
PRODUCTION OF DOCUMENTS TO
DEFENDANT THE UNITED STATES
DEPARTMENT OF STATE

PROPOUNDING PARTIES: PLAINTIFFS

RESPONDING PARTY: DEFENDANT UNITED STATES DEPARTMENT OF STATE

SET NO: REVISED SET FOUR

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure (“FRCP”), Plaintiffs request Defendant United States Department of State to produce the documents and materials specified below, within thirty (30) days of service, or at such other time and place, or in such other manner, as may be mutually agreed upon by the Parties. Production of documents shall be in accordance with the Instructions and Definitions set forth below and FRCP 34.

I. DEFINITIONS

A. As used herein, the terms “DOCUMENT” or “DOCUMENTS” mean any kind of written, graphic, or recorded matter, however produced or reproduced, of any kind or description, whether sent, received, or neither, including drafts, originals, non-identical copies, and information stored magnetically, electronically, photographically, or otherwise. As used herein, the terms “DOCUMENT” or “DOCUMENTS” include, but are not limited to, studies, papers, books, accounts, letters, diagrams, pictures, drawings, photographs, correspondence, telegrams, cables, text messages, emails, memoranda, notes, notations, work papers, intra-office and inter-office COMMUNICATIONS, contracts, financial agreements, grants, proposals, transcripts, minutes, orders, reports, recordings, documentation of telephone or other conversations, interview notes, committee minutes, meeting minutes, affidavits, slides, statements, summaries, opinions, indices, analyses, publications, policies, questionnaires, answers to questionnaires, statistical records, ledgers, journals, lists, logs, tabulations, charts, graphs, maps, surveys, data sheets, computer printouts, tapes, discs, microfilm, and all other

records or COMMUNICATIONS kept, regardless of the title, author, or origin. As used herein, the terms “DOCUMENT” or “DOCUMENTS” also include, but are not limited to, COMMUNICATIONS to, between, and among members, directors, employees, contractors, agents, or representatives.

B. As used herein, the phrase “REFERS, RELATES, REGARDS, OR PERTAINS TO” means containing, alluding to, responding to, commenting upon, discussing, showing, disclosing, explaining, mentioning, analyzing, constituting, comprising, evidencing, setting forth, summarizing, amending, or characterizing, either directly or indirectly, in whole or in part.

C. As used herein, the term “DEPARTMENT OF STATE,” means Defendant United States Department of State and shall refer to any and all current and former principals, employees, agents, attorneys, consultants, ambassadors, consuls, secretaries, special envoys, coordinators, advisers, and other representatives of the United States Department of State, including all offices, bureaus, agencies, departments, and programs within the United States Department of State.

D. As used herein, “FEDERAL DEFENDANTS” means the defendants in this action, including: The UNITED STATES OF AMERICA; DONALD TRUMP, in his official capacity as President of the United States; The OFFICE OF THE PRESIDENT OF THE UNITED STATES; CHRISTY GOLDFUSS and any Successor, in her official capacity as Director of Council on Environmental Quality; JOHN MICHAEL MULVANEY, in his official capacity as Director of the Office of Management and Budget; DR. JOHN HOLDREN and any Successor, in his official capacity as Director of the Office of Science and Technology Policy; The UNITED STATES DEPARTMENT OF ENERGY; JAMES RICHARD PERRY, in his official capacity as Secretary of Energy; The UNITED STATES DEPARTMENT OF THE

INTERIOR; RYAN ZINKE, in his official capacity as Secretary of Interior; The UNITED STATES DEPARTMENT OF TRANSPORTATION; ELAINE CHAO, in her official capacity as Secretary of Transportation; The UNITED STATES DEPARTMENT OF AGRICULTURE; SONNY PERDUE, in his official capacity as Acting Secretary of Agriculture; The UNITED STATES DEPARTMENT OF COMMERCE; WILBUR ROSS, in his official capacity as Secretary of Commerce; The UNITED STATES DEPARTMENT OF DEFENSE; JAMES NORMAN MATTIS, in his official capacity as Secretary of Defense; The UNITED STATES DEPARTMENT OF STATE; REX TILLERSON, in his official capacity as Secretary of State; The UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; EDWARD SCOTT PRUITT, in his official capacity as Administrator of the EPA, and any and all of each FEDERAL DEFENDANT's current or former principals, predecessors, officers, directors, employees, agents, attorneys, consultants, and other representatives.

E. As used herein, the term "INTERVENOR DEFENDANTS" shall refer to defendants AMERICAN PETROLEUM INSTITUTE, NATIONAL ASSOCIATION OF MANUFACTURERS, AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS, previously referred to National Petrochemical & Refiners Association and National Petroleum Refiners Association, and their current or former principals, officers, directors, employees, agents, attorneys, consultants, and other representatives.

F. As used herein, the terms "AMERICAN PETROLEUM INSTITUTE" or "API" shall refer to Intervenor Defendant American Petroleum Institute, and to all of its current and former employees, agents, officers, directors, representatives, consultants, affiliates, members, accountants, and attorneys, including any PERSON who has served in any such capacity at any time.

G. As used herein, the term “NATIONAL ASSOCIATION OF MANUFACTURERS” or “NAM” shall refer to Intervenor Defendant National Association of Manufacturers, and to all of its current and former employees, agents, officers, directors, representatives, consultants, affiliates, members, accountants, and attorneys, including any PERSON who has served in any such capacity at any time.

H. As used herein, the term “AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS” or “AFPM” shall refer to Intervenor Defendant American Fuel & Petrochemical Manufacturers and to all of its current and former employees, agents, officers, directors, representatives, consultants, affiliates, members, accountants, and attorneys, including any PERSON who has served in any such capacity at any time.

I. As used herein, the term “COMMUNICATION,” “COMMUNICATIONS,” or “COMMUNICATE” means every manner or method of disclosure, exchange of information, statement, or discussion between or among two or more PERSONS, including, but not limited to, face-to-face and telephone conversations, correspondence, memoranda, telegrams, telexes, email messages, transcribed voice-mail messages, text messages, meetings, discussions, releases, statements, reports, publications, or any recordings or reproductions thereof. Unless otherwise specified in the requests, COMMUNICATIONS are limited to those within the custody of the Secretary of State, the Under Secretaries of State, the Assistant Secretaries of State, the offices within the Under Secretary for Economic Growth, Energy and Environment, the Office of Policy Planning, including the Bureau of Oceans, Environment and Science, the Office of Democracy, Human Rights, and Labor, the Office of the Special Envoy for Climate Change, the Office of Population, Refugees and Migration, and any other office, envoy, or bureau that works on the issue of CLIMATE CHANGE.

J. As used herein, the term “PERSON” means all individuals, entities, firms, organizations, groups, committees, regulatory agencies, governmental entities, business entities, corporations, partnerships, trusts, and estates.

K. As used herein, the term “CLIMATE CHANGE” shall mean any change in the state of the climate lasting for an extended period of time. In other words, the term “CLIMATE CHANGE” includes changes in surface and ocean temperature, precipitation, or wind patterns, among other effects, that occur over several decades or longer, attributed directly or indirectly to human activity. The term “CLIMATE CHANGE” shall include ocean acidification, sea level rise, and other impacts resulting from the increased concentration of greenhouse gases in the atmosphere and oceans. “CLIMATE CHANGE” also has been called inadvertent weather modification, the greenhouse effect, CO₂ 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.

L. As used herein, the term “GLOBAL WARMING” shall mean the rise in global average temperatures near Earth’s surface. GLOBAL WARMING causes CLIMATE CHANGE but GLOBAL WARMING is only one aspect of CLIMATE CHANGE.

M. As used herein, the term “PREINDUSTRIAL GLOBAL AVERAGE TEMPERATURE” shall mean the 1890 global average temperature and global average atmospheric carbon dioxide concentration baselines and is the zero-point for temperature anomalies. The preindustrial era exemplifies the warmer interglacial periods of the Holocene, the era in which human civilization developed. This period is the earliest period with substantial global coverage of instrumental measurements.

N. As used herein, “ATMOSPHERIC CO₂ CONCENTRATION” shall mean the

global average atmospheric CO₂ concentration that is determined after analyzing air samples that are collected around the clock from “4 baseline observatories and 8 tall towers, air samples collected by volunteers at more than 50 sites, and air samples collected regularly from small aircraft mostly in North America.” The elevation of these sampling locations varies.

O. As used herein, the term “ENERGY POLICY” is the manner in which an entity, including, but not limited to, any of the FEDERAL DEFENDANTS and any of the INTERVENOR DEFENDANTS, decide to address issues of energy development including energy production, distribution and consumption. Attributes of ENERGY POLICY may include, but are not limited to, legislation, international treaties, subsidies, incentives, guidelines for energy conservation or exploration, taxation, or other policy techniques related to energy.

II. INSTRUCTIONS

A. Please produce and permit the inspection and copying of the DOCUMENTS described below which are in the possession, custody, or control of DEPARTMENT OF STATE, or in the possession, custody, or control of any attorney, consultant, agent, or representative of DEPARTMENT OF STATE.

B. Electronically stored information (“ESI”) shall be produced in its native form; that is, in the form in which the information was created, used, and stored by the native application employed by the producing party in the ordinary course of business. Near-native form is permitted; that is, in a form in which the item can be imported into an application without a material loss of content, structure, or functionality as compared to the native form.

Compressed native files must be extracted and processed prior to delivery, including metadata which must be submitted with the corresponding native file. Metadata should be extracted from

the native files and submitted with a corresponding load file. The parties may produce information items as single page Tagged Image File Format (“TIFF”) image files when practical to do so, such as in the case of producing scanned paper records or native files requiring redaction. Each TIFF file must be accompanied by a multi-page text load file.

C. For any DOCUMENT that DEPARTMENT OF STATE is required to produce in response to any of these requests, if such DOCUMENT is privileged, then DEPARTMENT OF STATE will:

- a. Identify the title and general subject matter of the DOCUMENT;
- b. State the date of the DOCUMENT;
- c. Identify the author(s) of the DOCUMENT;
- d. Identify the PERSONS for whom the DOCUMENT was prepared or to whom the DOCUMENT was sent;
- e. State the nature of the privilege claimed; and
- f. State in detail each and every fact upon which DEPARTMENT OF STATE bases a claim of privilege for the DOCUMENT.

D. The words “and” and “or” shall be construed in the conjunctive or disjunctive, whichever is most inclusive.

E. The singular form shall include the plural form and vice versa.

F. The present tense shall include the past tense and vice versa.

G. If any DOCUMENT cannot be produced in full, produce the DOCUMENT to the extent possible, indicating what information is being withheld and the reason such information is being withheld.

H. If a DOCUMENT once existed, but has been lost, destroyed, no longer exists, or

is no longer in the possession, custody, or control of DEPARTMENT OF STATE, identify each such DOCUMENT and separately state the details concerning the loss or destruction of the DOCUMENT, or the name and address of the current or last known custodian of the DOCUMENT, if known.

I. Every Request for Production herein shall be deemed a continuing Request for Production, and DEPARTMENT OF STATE is to supplement its response promptly if DEPARTMENT OF STATE subsequently obtains or discovers one or more responsive DOCUMENTS.

III. REQUESTS FOR PRODUCTION OF DOCUMENTS

1. DOCUMENTS that identify the current offices, Under Secretaries, and employees within the DEPARTMENT OF STATE with primary responsibility for work on CLIMATE CHANGE.

2. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO both Executive Order 13653: “Preparing the United States for the Impacts of Climate Change” (2013) and any CLIMATE CHANGE mitigation strategies of DEPARTMENT OF STATE.

3. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO President Trump’s Executive Order: “Presidential Executive Order on Promoting Energy Independence and Economic Growth” (2017).

4. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO briefings on CLIMATE CHANGE that were given or presented to each Secretary of State from 1965 to the present.

5. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO briefings on CLIMATE CHANGE that were provided to an incoming Presidential administration from 1965 to the present, including, but not limited to, transition books, briefs, and memoranda.

6. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO briefings on CLIMATE CHANGE that were provided by an outgoing Secretary of State to an incoming Secretary of State from 1965 to the present, including, but not limited to, transition books, briefs, and memoranda.

7. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS between Secretary of State Rex Tillerson and any representative of any INTERVENOR DEFENDANT on the issue of CLIMATE CHANGE since January 20, 2017.

8. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS between Secretary of State Rex Tillerson and any representative of any INTERVENOR DEFENDANT on the issue of ENERGY POLICY since January 20, 2017.

9. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS between Secretary of State Rex Tillerson and President Donald Trump on the issue of CLIMATE CHANGE since January 20, 2017.

10. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS between Secretary of State Rex Tillerson and President Donald Trump on the issue of ENERGY POLICY since January 20, 2017.

11. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS from 2009 to the present with any representative of TransCanada regarding both the impacts on CLIMATE CHANGE of the Keystone XL Pipeline and the greenhouse gas emissions from fossil fuels to be transported by that pipeline.

12. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS from 2009 to the present with any representative of the Canadian government regarding both the impacts on CLIMATE CHANGE of the Keystone XL Pipeline and the emissions from fossil fuels to be transported by that pipeline.

13. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS with any representative of TransCanada regarding the United Nations Climate Change Conference in Copenhagen, including, but not limited to, COMMUNICATIONS to or from Paul Elliott.

14. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the 2016 decision to lift the ban on U.S. oil exports, including, but not limited to, COMMUNICATIONS about how the decision to lift the ban on U.S. oil exports would impact U.S. oil production and CLIMATE CHANGE.

15. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS with the Global Climate Coalition between 1989 and 2002 related to international CLIMATE CHANGE negotiations.

16. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO Circular 175 memoranda that were prepared for international CLIMATE CHANGE negotiations from 1979 to the present, including the Circular 175 memoranda and supporting DOCUMENTS.

17. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO positions, briefings, discussions, strategies, recommendations on CLIMATE CHANGE in conjunction with the First World Climate Conference in Geneva, Switzerland from February 12-23, 1979, including, but not limited to, each COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the Declaration of the World

Climate Conference, issued at the conclusion of the First World Climate Conference.

18. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the position of each of the FEDERAL DEFENDANTS on the recommendation following the conference entitled “The Changing Atmosphere: Implications for Global Security,” held in Toronto, Canada from June 27 to 30, 1988, that governments “[r]educ[e] CO₂ emission by approximately 20% of 1988 levels by the year 2005 as an initial global goal.”

19. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the position of each of the FEDERAL DEFENDANTS to be taken at the conference entitled “The Changing Atmosphere: Implications for Global Security,” held in Toronto, Canada from June 27 to 30, 1988, including, but not limited to, DOCUMENTS relating to COMMUNICATIONS with any of the INTERVENOR DEFENDANTS regarding the conference or its outcomes.

20. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the response of each of the FEDERAL DEFENDANTS to the conference entitled “The Changing Atmosphere: Implications for Global Security,” held in Toronto, Canada from June 27 to 30, 1988, including, but not limited to, DOCUMENTS relating to the Call to Action and Action Plan adopted at the conference, records of attendance, participation by agency personnel, and COMMUNICATIONS with any of the INTERVENOR DEFENDANTS regarding the conference or its outcomes.

21. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS to or from John Sununu in 1989 pertaining to negotiations on a treaty that relates in whole or in part to CLIMATE CHANGE.

22. Each COMMUNICATION that REFERS, RELATES, REGARDS, OR

PERTAINS TO United Nations General Assembly Resolution A/RES/45/212, December 21, 1990, “Protection of Global Climate for Present and Future Generations of Mankind.”

23. Each DOCUMENT and COMMUNICATION between 1991 and 1997 that REFERS, RELATES, REGARDS, OR PERTAINS TO the position of each of the FEDERAL DEFENDANTS on, or interpretation of, paragraph two of the preamble to the United Nations Framework Convention on Climate Change (“UNFCCC”).

24. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the position of each of the FEDERAL DEFENDANTS at the United Nations Negotiating Committee on Climate Change meeting in Washington, D.C., in February 1991, including, but not limited to COMMUNICATIONS regarding the White House “Action Agenda.”

25. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the position of each of the FEDERAL DEFENDANTS on, and interpretation of, the following clauses of Article 3.1 of the UNFCCC: “[t]he Parties should protect the climate system for the benefit of present and future generations of humankind Accordingly, the developed country Parties should take the lead in combating climate change the adverse effects thereof.”

26. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO proposals and statements to other countries prior to the adoption of the agreed final text by each of the FEDERAL DEFENDANTS of the following clauses of Article 3.1 of the UNFCCC: “[t]he Parties should protect the climate system for the benefit of present and future generations of humankind Accordingly, the developed country Parties should take the lead in combating climate change the adverse effects thereof.”

27. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the position of each of the FEDERAL DEFENDANTS on, and interpretation of, Article 3.3 of the UNFCCC.

28. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS by each of the FEDERAL DEFENDANTS with any representative of any of the INTERVENOR DEFENDANTS prior to the adoption of the agreed final text of Article 3.3 of the UNFCCC.

29. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO scientific information on CLIMATE CHANGE and levels of atmospheric CO₂ and temperature increases underlying the position of any of the FEDERAL DEFENDANTS prior to the adoption of Article 3.3 of the UNFCCC.

30. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the position of each of the FEDERAL DEFENDANTS on interpreting Article 2 of the UNFCCC.

31. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS by each of the FEDERAL DEFENDANTS with any representative of any of the INTERVENOR DEFENDANTS prior to the adoption of the agreed final text of Article 2 of the UNFCCC.

32. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO interpretations of the meaning of Article 2 of the UNFCCC by each of the FEDERAL DEFENDANTS, including, but not limited to, interpretation of the phrases “dangerous anthropogenic interference with the climate system” and “a time-frame sufficient to allow ecosystems to adapt naturally to climate change”

33. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO interpretations of the meaning of Article 4, paragraph 2(a) of the UNFCCC by each of the FEDERAL DEFENDANTS at the time of signing.

34. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the interpretation by each of the FEDERAL DEFENDANTS of the phrase “recognizing that the return by the end of the present decade to earlier levels of anthropogenic emissions of carbon dioxide and other greenhouse gases . . .” in Article 2 of the UNFCCC.

35. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the recommendation or decision to use 1990 greenhouse gas emission levels as a baseline year for greenhouse gas emission reductions under the UNFCCC.

36. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the recommendation or decision to use of 2005 greenhouse gas emission levels as a baseline year for measuring United States greenhouse gas emission reductions.

37. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the position of each of the FEDERAL DEFENDANTS on the feasibility, timing, and scale of necessary greenhouse gas reductions, developed in anticipation of the United Nations Conference on Environment and Development (“UNCED”), Rio de Janeiro, June 3-14, 1992, also known as the Rio Earth Summit.

38. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO both CLIMATE CHANGE mitigation strategies, opportunities, plans, and recommendations and the Berlin Mandate leading up to and immediately after the first

conference of the Parties in Berlin, March 28 to April 7, 1995.

39. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the commitments of Article 4, paragraph 2(a) and (b), of the UNFCCC leading up to and immediately after the first conference of the Parties in Berlin, March 28 to April 7, 1995.

40. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO information supporting the negotiating position taken by each of the FEDERAL DEFENDANTS leading up to the 1997 UNFCCC meeting in Kyoto.

41. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the positions of each of the FEDERAL DEFENDANTS for the 6th Conference of the Parties, which occurred between January 20 and July 27, 2001.

42. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO officials of the DEPARTMENT OF STATE engaged in COMMUNICATIONS with representatives of other countries to reject the Kyoto Protocol.

43. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the decision of each of the FEDERAL DEFENDANTS to withdraw from the Kyoto Protocol, including, but not limited to COMMUNICATIONS with any representatives of the INTERVENOR DEFENDANTS.

44. Each DOCUMENT and COMMUNICATION to or from DEPARTMENT OF STATE official Paula Dobriansky that REFERS, RELATES, REGARDS, OR PERTAINS TO the UNFCCC Bali Climate Change Conference in 2007.

45. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the participation by any of the FEDERAL DEFENDANTS in

the final plenary session of Intergovernmental Panel on Climate Change (“IPCC”) Second Assessment report in Madrid in 1995, including, but not limited to, any DEPARTMENT OF STATE communiqués referencing findings in the Second Assessment report and COMMUNICATIONS regarding the Second Assessment report’s Summary for Policymakers.

46. Each DOCUMENT and COMMUNICATION from January 20, 2017 to the present that REFERS, RELATES, REGARDS, OR PERTAINS TO the United States withdrawing from the UNFCCC.

47. Each DOCUMENT and COMMUNICATION from January 20, 2017 to the present that REFERS, RELATES, REGARDS, OR PERTAINS TO the United States withdrawing from the Paris Agreement.

48. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the support for, critiques of, or analysis of, the goal of the Paris Agreement of “holding the increase in the global average temperature to well below 2° C above preindustrial levels and pursuing efforts to limit the temperature increase to 1.5° C,” including, but not limited to, COMMUNICATIONS to or from Todd Stern.

49. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO DEPARTMENT OF STATE’s consideration, evaluation, or analysis of impacts from CLIMATE CHANGE that result from an ATMOSPHERIC CO₂ CONCENTRATION in the atmosphere between 350 parts per million and 400 parts per million.

50. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO DEPARTMENT OF STATE’s consideration, evaluation, or analysis of impacts from CLIMATE CHANGE that result from an ATMOSPHERIC CO₂ CONCENTRATION in the atmosphere between 400 parts per million and 450 parts per million.

51. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO DEPARTMENT OF STATE's consideration, evaluation, or analysis of impacts from CLIMATE CHANGE that result from an ATMOSPHERIC CO₂ CONCENTRATION in the atmosphere exceeding 450 parts per million.

52. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO DEPARTMENT OF STATE's consideration, evaluation or analysis of impacts from CLIMATE CHANGE that result from a global temperature increase of 1.5° Celsius or more, including comparisons between global temperature increase of 1.5° and 2° Celsius.

53. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO DEPARTMENT OF STATE's consideration, evaluation, or analysis of the safe ATMOSPHERIC CO₂ CONCENTRATION.

54. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO DEPARTMENT OF STATE's consideration, evaluation, or analysis of the safe level of GLOBAL WARMING above the PREINDUSTRIAL GLOBAL AVERAGE TEMPERATURE.

55. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO the commitment by each of the FEDERAL DEFENDANTS to “rationalize and phase out over the medium term, inefficient fossil fuel subsidies that encourage wasteful consumption” during the G20 Summit in Pittsburgh, Pennsylvania on September 25, 2009, including, but not limited, to COMMUNICATIONS between each of the FEDERAL DEFENDANTS and each of the INTERVENOR DEFENDANTS prior to and after the announcement of this commitment.

56. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS sent or received from Susan Rice, former U.S. Ambassador to the United Nations between January 22, 2009 and August 2, 2013, on the issue of CLIMATE CHANGE mitigation, including atmospheric carbon dioxide level targets (usually expressed as ppm) or GLOBAL WARMING-induced temperature change targets (usually expressed as Celsius degrees).

57. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS sent or received from Susan Rice, former U.S. Ambassador to the United Nations, between January 22, 2009 and August 2, 2013, on the issue of ENERGY POLICY as it relates to CLIMATE CHANGE.

58. Each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS sent or received from Samantha Power, former U.S. Ambassador to the United Nations, between August 2, 2013 and June 11, 2015, on the issue of atmospheric carbon dioxide level targets (usually expressed as ppm) or GLOBAL WARMING-induced temperature change targets (usually expressed as Celsius degrees).

59. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO CLIMATE CHANGE mitigation strategies, opportunities, plans, and recommendations relied upon in the First Biennial Report of the United States of America under the UNFCCC.

60. Each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO CLIMATE CHANGE mitigation strategies, opportunities, plans, and recommendations relied upon in the Second Biennial Report of the United States of America under the UNFCCC.

61. Each DOCUMENT and COMMUNICATION from November 2016 to the present that REFERS, RELATES, REGARDS, OR PERTAINS TO direction to remove DOCUMENTS from government websites, or removing entire government websites, which contain information on CLIMATE CHANGE.

62. Each DOCUMENT and COMMUNICATION from 2001 to the present that REFERS, RELATES, REGARDS, OR PERTAINS TO direction to employees of the DEPARTMENT OF STATE as to how they should or should not COMMUNICATE information to third parties about CLIMATE CHANGE and the impacts of CLIMATE CHANGE, including, but not limited to, the existence of CLIMATE CHANGE, the role of human activity in CLIMATE CHANGE, scientific uncertainty regarding the existence or causes of CLIMATE CHANGE, sea level rise, extreme weather events, ocean acidification, droughts, floods, and human health impacts.

Dated: May 19, 2017

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of May, 2017, I have served the foregoing Plaintiffs' Revised Requests for Production of Documents to Defendant United States Department of State to Defendant Department of State by email on the following counsel for all parties.

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Exhibit 10 to Declaration of Sean C. Duffy

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

KELSEY CASCADIA ROSE JULIANA, et al.,
Plaintiffs,

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

v.
UNITED STATES OF AMERICA, et al.,
Federal Defendants.

**JOINT STATUS REPORT AS OF
JUNE 12, 2017**

The parties have met and conferred and hereby respectfully provide this joint status report to inform the court of the status of discovery and other pending or upcoming motions.

I. Intervenor Defendants' Motions to Withdraw

All three Intervenor Defendants have filed motions to withdraw from the case. Plaintiffs have filed their response briefs to the three motions to withdraw.

Plaintiffs' Position

Plaintiffs do not oppose the motions to withdraw but are requesting that such withdrawal only be granted with conditions. Plaintiffs have requested this Court order that: (1) Intervenor Defendants' withdrawal be with prejudice, finding that Intervenor Defendants no longer meet the requirements of FRCP 24; (2) Intervenor Defendants pay attorneys' fees and costs attributed to Intervenor Defendants' participation in the case; (3) the legal determinations in the case have a *stare decisis* effect on Intervenor Defendants' interest or available remedies in other litigation; (4) Intervenor Defendants and each of their members are precluded from participating in this case as a party and any future participation is limited to *amicus curiae* participation, if at all; and (5) all of Intervenor Defendants' pending motions and objections in the case are dismissed. If the Court decides not to grant the Intervenor Defendants' motions to withdraw, Plaintiffs request that Intervenor Defendants be required to provide full and complete responses to all outstanding discovery requests within 5 days of the Court's order denying the motions to withdraw.

Intervenor Defendants' Position

Plaintiffs have clearly indicated, in pleadings and in the media that they do not oppose Intervenor Defendants' motions to withdraw. The conditions Plaintiffs seek to impose on withdrawal

have no legal or factual bases. Intervenor will respond more fully in their Reply briefs in support of the motions to withdraw. With regard to the discussions about discovery, in light of the pending motions to withdraw, Intervenor do not currently have a view regarding the issues raised herein.

Federal Defendants' Position

Federal Defendants do not oppose the intervenors' motion to withdraw.

II. Plaintiffs' Requests for Admission to Federal Defendants

Plaintiffs' Position

Four months after they were served with Plaintiffs' Requests for Admissions, Federal Defendants have only objected to Plaintiffs' ten Requests for Admission to Defendants the Executive Office of the President and the Environmental Protection Agency. Federal Defendants did not answer any of the ten requests, and instead served joint objections that do not distinguish the different grounds for objections between the Executive Office of the President and the Environmental Protection Agency, including assertions of executive privilege. Plaintiffs met and conferred with Federal Defendants on June 9 requesting that they distinguish the grounds for objections for each defendant in order to inform Plaintiffs' decision to move to compel responses. Despite this Court's statements at the Status Conferences and this Court's denials of the various motions to stay, Federal Defendants have yet to provide a substantive response to any discovery, have yet to schedule a single witness for deposition, and have yet to produce a single document. Their "game" is clearly to delay the discovery process for as long as possible. Plaintiffs' position is that, absent an order of this Court, Federal Defendants will continue to take the position that they do not have to provide substantive responses or produce any documents. Rather than burden this Court with numerous motions to compel and for

sanctions, Plaintiffs request that the parties and this Court use the June 14 Status Conference to review the outstanding discovery and the discovery responses to date and develop a firm schedule for substantive discovery responses, depositions, and production of documents.

Federal Defendants' Position

Federal Defendants continue to oppose discovery at this stage of the litigation for the reasons set forth in the objections to the Findings and Recommendation (ECF No. 149) and motion to stay the litigation (ECF No. 151). Nonetheless, Federal Defendants filed responses to Plaintiffs' First Set of Requests for Admission on May 31. Those responses address the only RFAs that have been propounded on Federal Defendants. The responses object to the Requests for Admission on a number of bases and on these bases deny each request. If Plaintiffs dispute the objections, the next step is for the parties to meet and confer.

III. Plaintiffs' Requests for Production of Documents on Federal Defendants

Plaintiffs' Position

Federal Defendants have not formally served objections to any of Plaintiffs' requests for production of documents, but have conferred with Plaintiffs regarding their concerns about the scope of the requests and possible claims of deliberative process and/or executive privilege. In the interest of moving our discovery disputes forward to a quick resolution, Plaintiffs have in good faith substantially narrowed their request for production of documents to The Executive Office of the President and President Donald Trump, The United States Department of State, The United States Department of Agriculture, and The United States Department of Defense. Plaintiffs believe the revised requests for production of documents are sufficiently narrow and will lead to important evidence relevant to Plaintiffs' claims.

Plaintiffs have not received any updates from Federal Defendants since the May 4, 2017

in person meet and confer regarding the status of the two outstanding Request for Production of Documents seeking documents located at National Archives and Records Administration (“NARA”). Since March, Federal Defendants have represented to Plaintiffs that said records are undergoing a declassification process, but may be subject to executive privilege. In the April 3, 2017 Joint Status Report, Federal Defendants committed to “update Plaintiffs on a rolling basis as the status of the documents are determined and, where applicable, the production timeline is available.” ECF 131, p. 10. However, Plaintiffs have received no updates on the status of the processing of the documents, their production timeline, or whether a determination has been made on whether the President intends to attempt to exercise executive privilege for all or any specific documents since the May 4 meet and confer. In an attempt to speed up the process, Plaintiffs have even offered to go to the libraries to review the records. If Federal Defendants do not provide Plaintiffs with an update on the NARA RFPs and a reasonable timeframe by which they will either produce the documents or file written objections Plaintiffs will move to compel the production of the documents before the end of June.

Further, Federal Defendants have ignored Plaintiffs’ Third Set of Requests for Production of Documents to Federal Defendants and have not served written objections, sought further extension, or produced any documents. As a result of their failure to timely respond, Federal Defendants have waived all objections, including any objections as to privilege. Plaintiffs will move to compel production of those documents before the end of June.

Despite this Court’s statements at the Status Conferences and this Court’s denials of the various motions to stay, Federal Defendants have yet to provide a substantive response to any discovery, have yet to schedule a single witness for deposition, and have yet to produce a

single document. Rather than burden this Court with numerous motions to compel and for sanctions, Plaintiffs request that the parties and this Court use the June 14 Status Conference to review the outstanding discovery and the discovery responses to date and develop a firm schedule for substantive discovery responses, depositions, and production of documents.

Federal Defendants' Position

A. Requests for Production on the Executive Office of the President

On May 19, Plaintiffs filed revised requests for production of documents on the Executive Office of the President that supplant the previously propounded request for production on the Executive Office. The revised requests do not narrow the overbroad definitions, nor do they “substantially narrow” the requests. The requests are objectionable because they seek information that is subject to the executive privilege. In addition, the revised requests, like the initial requests that they supplant, are burdensome, overbroad, and are not proportional to the needs of the case. The time in which to respond to the requests has not yet lapsed.

B. Requests for Production on the Departments of State, Defense, and Agriculture

On May 19, Plaintiff filed revised requests for production separately on the Departments of State, Defense, and Agriculture that supplant the previously propounded request for production on each of these agencies. The time in which to respond to these revised requests has not yet lapsed. The revised requests that were propounded do not narrow the overbroad definitions, nor do they “substantially narrow” the requests. Instead, the revised requests, like the initial requests they supplant, are objectionable because they are burdensome, overbroad, and are not proportional to the needs of the case. Nonetheless, with respect to each agency, Federal Defendants are exploring the extent which they can commence production of certain non-privileged, responsive material on a rolling basis.

C. Requests Seeking Emails from Rex Tillerson while he was an employee of Exxon Mobil.

On March 17, Plaintiffs propounded their Third Set of Requests for Production. These requests seek any communications any Federal Defendant had with Secretary of State Rex Tillerson through a pseudonym or alias “Wayne Tracker” on the subject of climate change or energy policy. This request was discussed during the parties’ in-person meet and confer on May 4 and again during a telephonic meet and confer on June 9. Federal Defendants informed Plaintiffs that they will object to this request on the grounds, among others, that it is not designed to produce any admissible evidence on any claim or defense in this case, is overbroad, unduly burdensome, is not proportional to the needs of the case, and seeks information that is more readily available from other sources. During the June 9 meet and confer, Plaintiffs indicated that they disagree, but committed to provide a letter explaining the probative value of these requests. Federal Defendants await that letter.

D. Document Requests Pertaining to Documents Held in Presidential Libraries and the National Archives and Records Administration.

On February 21 and March 7, Plaintiffs propounded discovery requests on Federal Defendants seeking presidential records housed in presidential libraries and EPA records housed in facilities operated by the National Archives and Records Administration (“NARA”). Through discussions with NARA, Federal Defendants have learned that the records sought, insofar as they pertain to the George W. Bush administration, cannot be obtained because the Presidential Records Act exempts such records from disclosure until 12 years after the conclusion of an administration. 44 U.S.C. § 2204.

In addition, with respect to records sought by Plaintiffs of administrations that preceded the George W. Bush administration (*i.e.* records of the Kennedy, Johnson, Reagan, George

H.W. Bush, and Clinton administrations), Federal Defendants have conferred with NARA, which has confirmed that some of the documents sought are designated as classified and will be withheld on that basis. With respect to non-classified documents, Plaintiffs may visit the relevant records facilities and review non-classified records after an appropriate protective order that accounts for, among other things, the non-disclosure of the personally identifiable information of individuals is in place. Federal Defendants are preparing a proposed draft protective order for the Plaintiffs to review.

IV. Depositions

Plaintiffs' Position

Plaintiffs noticed the depositions of two federal government employees: C. Mark Eakin, Coordinator of National Ocean and Atmospheric Administration's Coral Reef Watch program, Satellite Oceanography & Climatology Division; and Michael Kuperberg, Executive Director, United States Global Change Research Program. Those depositions are noticed for June 14 and 15, respectively. To date, Federal Defendants have not formally responded to these notices. During the course of the June 9 meet and confer, Federal Defendants stated the witnesses would not be produced on the dates noticed and they are attempting to provide available dates in July for the depositions.

After multiple meet and confers, on June 12, 2017, Plaintiffs noticed the FRCP 30(b)(6) depositions to the following defendant agencies: United States Department of Agriculture, Department of State, Department of Defense, Department of Commerce, Department of Energy, Department of Interior, Department of Transportation, and the Environmental Protection Agency.

Federal Defendants' Position

Plaintiffs noticed the depositions of two federal government employees: C. Mark Eakin,

Coordinator of National Ocean and Atmospheric Administration's Coral Reef Watch program, Satellite Oceanography & Climatology Division; and Michael Kuperberg, Executive Director, United States Global Change Research Program. Plaintiffs noticed the depositions for June 14 and June 15 respectively, both to be held in Washington, D.C., where these witnesses are located. Neither of the two deponents is available on those dates. These dates also conflict with the in-person status conference in Eugene, Oregon. The parties are exploring mutually-agreeable dates for these depositions.

Federal Defendants have yet to receive any deposition notices pursuant to Fed. R. Civ. P. 30(b)(6).

V. Stipulation Regarding Discovery Procedure

Plaintiffs' Position

In their Status Reports of January 31, 2017 (ECF 110), March 7, 2017 (ECF 119), and April 3, 2017 (ECF 131), Plaintiffs proposed a Stipulation concerning Electronically Stored Information ("ESI"). To date, Federal Defendants have not responded with any comments. On June 8, 2017, Federal Defendants circulated a draft order and stipulation on discovery as well as an appendix that accompanies that document. At the June 14 Joint Status Conference, Plaintiffs are prepared to negotiate and enter into both their Stipulation concerning ESI and Federal Defendants' order and stipulation on discovery.

Federal Defendants' Position

Federal Defendants provided Plaintiffs with a proposed order and stipulation governing discovery in this case, with provisions pertaining to the handling of electronically stored information, and taking account of unique laws that apply to federal government. The parties need to negotiate the relevant terms of a proposed order and stipulation. Federal Defendants await Plaintiffs response to the proposed order and stipulation that has been provided.

VI. Experts

Plaintiffs' Position

Plaintiffs are actively working with experts to prepare their expert reports and the reports are currently being drafted by the experts. While Plaintiffs anticipate being able to serve the majority of their expert reports by July 1, as directed by the Court, due to the travel schedules and other issues of certain experts, it is likely that all of Plaintiffs' expert reports will not be finalized by July 1. Plaintiffs will disclose expert reports that are completed on July 1 and will propose a new deadline for certain expert reports during the June 14 Joint Status Conference.

Plaintiffs will be substituting previously disclosed sequestration expert Keith Paustian with Phil Robertson, University Distinguished Professor of Ecosystem Science at Michigan State University. While Keith Paustian agreed to be an expert for Plaintiffs, he also serves on a National Academy of Sciences ("NAS") committee, and NAS lawyers would not allow him to be an expert in this case while he serves on the committee, despite his efforts to obtain their permission. Plaintiffs also intend to disclose up to three additional experts.

Federal Defendants' Position

At the Court's May 18 status conference, the Court asked Plaintiffs to provide expert reports for their 11 anticipated experts by July 1 and for Federal Defendants to provide expert disclosures 45 days after the reports are filed. Both parties indicated they would endeavor to do so. Federal Defendants have continued to meet with potential candidates and will endeavor to meet the Court's suggested 45-day timeframe, but remain cognizant that identification of specific experts are difficult until Federal Defendants can fully digest the opinions offered by Plaintiffs' experts, share those opinions with potential expert candidates, and determine which

potential experts are appropriate to support Federal Defendants’ defense.

The identity and subject matter of the testimony of any additional expert witness whom Plaintiffs intend to call should be promptly identified.

VII. Trial Schedule

Plaintiffs’ Position

Given Plaintiffs’ concerns about the urgency of addressing climate change and redressing their injuries, Plaintiffs continue to prepare for a late 2017 trial date.

Federal Defendants’ Position

Federal Defendants believe that this matter should be stayed and, if no stay is granted, that a trial schedule should not be set until this Court resolves some of the present discovery disputes and the scope of the issues to be decided at trial. Federal Defendants believe that a late 2017 trial date is entirely unrealistic given the extraordinary scope of the case and the discovery that Plaintiffs have propounded, which will assuredly take much longer to respond to.

VIII. Plaintiffs’ Protective Order

Plaintiffs’ Position

Plaintiffs are drafting a proposed protective order and will circulate to Federal Defendants before the June 14 meet and confer.

Federal Defendants’ Position

Federal Defendants have yet to receive a proposed protective order.

IX. Status of Discovery Propounded to Date

To date, Plaintiffs have propounded the following discovery:

DATE PROPOUNDED	PLAINTIFFS’ POSITION ON RESPONSES DUE DATE	FEDERAL DEFENDANTS POSITION ON RESPONSES DUE DATE	PARTY OR PARTIES	TITLE	STATUS

12/28/2017			API	Plaintiffs' Notice of Deposition of Rex Tillerson	To be re-noticed
1/20/2017	Responses served on May 31	Responses served on May 31	EOP, EPA	First Set of Requests for Admission to Defendants Executive Office of the President and the Environmental Protection Agency	Responses filed
2/17/2017	3/23/2017	3/23/2017	API	Request for Production of Documents to American Petroleum Institute	Objections filed. Narrowed and re-served
2/21/2017	6/5/2017	Deadlines tolled pending meet and confer	All Federal Defendants	Requests for Production of Documents to Federal Defendants (documents from Presidential Libraries)	Parties negotiating protective order
3/7/2017	6/5/2017	Deadlines tolled pending meet and confer	All Federal Defendants	Second Set of Requests for Production of Documents to Federal Defendants (documents from Presidential Libraries)	Parties negotiating protective order
3/17/2017	4/16/2017	4/16/2017	API	Third Set of Requests for Production of Documents to American Petroleum Institute (re: "Wayne Tracker" emails)	Not answered; motions to withdraw pending
3/17/2017	6/5/2017	Deadlines tolled pending meet and confer	All Federal Defendants	Third Set of Requests for Production of Documents to Federal Defendants (re: "Wayne Tracker" emails)	Meet and confer. Plaintiffs to provide letter response to Federal Defs.
3/24/2017	5/25/17	5/25/17	All Intervenor Defendants	Request for Admission to Intervenor Defendants	Objections filed. Narrowed and re-served
5/11/2017	6/14/2017	6/14/2017	Federal Defendants	Plaintiffs' Notice of Deposition to C. Mark Eakin	Parties met and conferred June 9
5/11/2017	6/15/2017	6/15/2017	Federal Defendants	Plaintiffs' Notice of Deposition to Mark Kuperberg	Parties met and conferred June 9
5/19/2017	6/19/2017	6/19/2017	API	Revised Request for Production of Documents to American Petroleum Institute	
5/19/2017	6/19/2017	6/19/2017	All Intervenor Defendants	Revised Request for Production of Documents	
5/19/2017	6/19/2017	6/19/2017	USDA	Revised Request for Production of Documents to Defendant United States Department of Agriculture	
5/19/2017	6/19/2017	6/19/2017	DOD	Revised Request for Production of Documents to Defendant United States Department of Defense	
5/19/2017	6/19/2017	6/19/2017	State	Revised Request for Production of Documents to Defendant United States Department of State	
5/19/2017	6/19/2017	6/19/2017	EOP, DT	Revised Request for Production of Documents to Defendants the Executive Office of the President and President Donald	

				Trump	
6/12/2017			EPA	Plaintiffs' 30(b)(6) Notice of Deposition to Defendant United States Environmental Protection Agency	
6/12/2017			DOI	Plaintiffs' 30(b)(6) Notice of Deposition to Defendant United States Department of Interior	
6/12/2017			State	Plaintiffs' 30(b)(6) Notice of Deposition to Defendant United States Department of State	
6/12/2017			Commerce	Plaintiffs' 30(b)(6) Notice of Deposition to Defendant United States Department of Commerce	
6/12/2017			DOT	Plaintiffs' 30(b)(6) Notice of Deposition to Defendant United States Department of Transportation	
6/12/2017			DOD	Plaintiffs' 30(b)(6) Notice of Deposition to Defendant United States Department of Defense	
6/12/2017			DOE	Plaintiffs' 30(b)(6) Notice of Deposition to Defendant United States Department of Energy	
6/12/2017			USDA	Plaintiffs' 30(b)(6) Notice of Deposition to Defendant United States Department of Agriculture	

Dated: June 12, 2017

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

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

/s/ Julia A. Olson

JULIA A. OLSON

Exhibit 11 to Declaration of Sean C. Duffy

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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

THE HON. THOMAS M. COFFIN, JUDGE PRESIDING

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

Plaintiffs,)

v.)

UNITED STATES OF AMERICA, et al.,)

Defendants.)

No. 6:15-cv-01517-TC

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EUGENE, OREGON

WEDNESDAY, JUNE 14, 2017

PAGES 1 - 48

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1 sort of understanding of the case entirely at this point.

2 But, you know, it's going to deal with, you know,
3 not so much with who knew what when, which I don't think
4 there is a lot of dispute on that if you put those two
5 documents next to each other, but it's going to get into
6 technical issues of how dramatic is this, what is going to
7 happen, what would need to be done to prevent it. And
8 that's really a topic for the experts.

9 Now, you know, just in terms of when we are
10 talking about the scope and how burdensome it is, I am also
11 looking at this from a process perspective because, in
12 addition to interfacing with the plaintiffs when we are
13 doing these reports and meeting and conferring, I am
14 interfacing with each of these agencies, and they very
15 much -- that's very much in the front of their mind because
16 they are looking at their program budgets and saying, do I
17 have the resources to do this, how many thousands of people
18 are going to have to be involved in this process.

19 THE COURT: You are talking about the process of
20 discovery?

21 MR. DUFFY: Correct, because the discovery as we
22 have it now, and I will just use one example so it's
23 somewhat concrete, but on the Executive Office of the
24 President we have each document and communication that
25 refers, relates, regards, or pertains to briefing on climate

1 change that was given or presented to each president from
2 1965 to the present. That's a monumental task.

3 And so where I see this going in terms of the
4 discovery is us conferring with the plaintiffs and deciding,
5 okay, what do you really need here. Do we need to be going
6 into archives going back 60 years to find things where I
7 don't even know if there's much dispute?

8 But it would surely be burdensome to require so
9 many individuals to take the image off of their laptop
10 computer and to copy -- I mean, they are asking for every
11 kind of document. So we are talking about paper documents
12 that are often archived somewhere as well.

13 And so the way I see this going forward is not us
14 producing adversarial positions on these status reports but
15 actually meeting and conferring.

16 And the way these things usually proceed with this
17 kind of broad request is we end up with a finite number of
18 custodians, with a finite types of documents that we are
19 going to produce. For example, you know, maybe we are not
20 going to produce voice mail messages or things that are on
21 backup tapes, which are very expensive to produce. But
22 maybe we are going to run some search terms through people's
23 e-mail over a period of time and see if that produces
24 anything.

25 THE COURT: Well, I know how difficult that

Exhibit 12 to Declaration of Sean C. Duffy



United States Department of Justice

Environment & Natural Resources Division

DJ# 90-1-4-14528

Sean C. Duffy

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Natural Resources Section

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June 23, 2017

Via Email

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Daniel M. Galpern (Dan.Galpern@gmail.com)

Re: *Juliana v. United States*, No. 6:15-cv-1517-TC (D. Or.)

Counsel:

As discussed during our June 14, 2017 meet-and-confer, I write to set forth the United States' informal responses to Plaintiffs' revised requests for production and to offer a proposed document discovery plan that is compatible with the Court's schedule for expert witness disclosures and stated preference for trial in early 2018. As stated in our mandamus petition, Defendants believe that the district court proceedings should be stayed in this improper case.

- I. *Plaintiffs' discovery requests cannot be completed in advance of an early 2018 trial date.*

Magistrate Coffin's comments during the June 14, 2017 status conference directly impact the scope and timing of fact discovery in this case. We take as genuine Plaintiffs' representation to Magistrate Coffin that they will narrow their factual discovery demands and focus on expert work in conjunction with an early 2018 trial date. To that end, we submit that Plaintiffs' current requests for production—even the revised requests—seek far more material than could be reasonably assembled by the *end* of 2018, much less in sufficient time in advance of an early 2018 trial to be useful. Those requests are also not tailored in a meaningful manner to address the factual disputes set forth in the parties' respective pleadings.

The initial overbreadth of Plaintiffs' requests lies in the definitions. The definition of "document" includes all manner of recorded information. It would concern sticky notes to discs, e-mails to voicemails, and reports to questionnaires, among other materials. The definition of "climate change" captures "*any* change in the state of the climate lasting for an extended period of time" (emphasis added). The definition of "relating to," a phrase that modifies several of the requests propounded, seeks production of "documents" that, among other things, merely "allud[e] to" a topic "either directly or indirectly, in whole or in part." Each of the cabinet-level

agencies is defined to include “all current and former principles, employees, agents, attorneys, consultants, secretaries, coordinators, advisers, and other representatives” of agencies, including “all offices, bureaus, departments, and programs” within the agencies. These broad definitions expand the scope of what are already broad document requests. Defendants objected to the scope of the definitions in the original requests. Defendants were disappointed to find that the definitions were not altered in Plaintiffs’ revised requests.

The overbreadth of the definitions mirrors the overbreadth of the specific requests. By way of example, a revised request propounded on the Executive Office of the President seeks “each DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS OR PERTAINS TO briefing on CLIMATE CHANGE that was given or presented to each PRESIDENT from 1965 to the present.” Similarly, a revised request propounded on the Department of Defense seeks “[e]ach briefing on CLIMATE CHANGE that was given to or presented to each Secretary of Defense from 1965 to present.” Identical requests seek briefings to the Secretaries of State, Agriculture, and Transportation.

In addition to these overarching, wide-ranging requests for briefings on the overbroad definition of “climate change,” the requests seek production of documents on issues that are not relevant to the disputed factual issues in this case. For example, revised Request for Production (“RFP”) No. 12 on the State Department seeks “each DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO COMMUNICATIONS from 2009 to the present with any representative of the Canadian Government regarding both the impacts on CLIMATE CHANGE of the Keystone XL Pipeline and the emissions from fossil fuels to be transported by that pipeline.” Other examples are revised RFP Nos. 10, 11, and 12 on the Department of Agriculture seeking “[e]ach DOCUMENT and COMMUNICATION that REFERS, RELATES, REGARDS, OR PERTAINS TO CLIMATE CHANGE between” senior agency personnel and “each of the INTERVENOR DEFENDANTS from 1990 to the present.”

Finally, even where the revised requests identify a single report, the requests employ qualifiers and the above-mentioned overbroad defined terms to expand the scope of production. An example is revised RFP No. 7 on the Agriculture Department, which seeks “[e]ach COMMUNICATION and DOCUMENT that REFERS, RELATES, REGARDS, OR PERTAINS TO the DEPARTMENT OF AGRICULTURE’S 2010 Climate Change Science Plan and related analyses or recommendations on how USDA can mitigate CLIMATE CHANGE.” Again, the breadth of the defined terms in Plaintiffs’ requests expands the scope of production from a single 2010 plan to a far-ranging production of material that addresses the far-ranging definition of “climate change.” In short, Plaintiffs’ revised requests do not reflect a serious effort to narrow fact discovery in this case, nor are they tailored in any meaningful fashion to specific factual disputes from the pleadings in this case.

With respect to electronically stored information, Plaintiffs’ definition of “documents” includes “any kind of written, graphic, or recorded matter.” Plaintiffs’ requests also identify specific instructions pertaining to the production of electronically stored information that the Federal Rules of Civil Procedure do not mandate and that complicate and, therefore, lengthen the time for production. The process for identifying, gathering, processing, reviewing, and producing electronically stored information is arduous and lengthy. The process starts by conducting a review of each responding agency to determine how and where records are stored and who the possible custodians are that might possess records that are responsive to the requests. The members of that pool of custodians whose records should be queried will depend on a number of factors, including the potential for duplication across custodians and the possibility that a custodian’s exposure to relevant information is tenuous. Once a pool of

custodians is identified, an effort to identify search terms is undertaken. The development of search terms is an iterative process of trial and error that aims at striking a reasonable balance between the risks of (1) conducting a search that omits useful information and (2) conducting a search that includes extraneous, irrelevant information that escalates the time and cost of production with little or no benefit to the case. The balancing and give-and-take of identifying custodians and search terms is an iterative process that requires running sample queries against various repositories, measuring the output of those sample queries, and then making adjustments to account for relevance, cost, time, and resource constraints. Prior experience shows that the final identification of custodians and the development of search terms in cases seeking more discrete factual events than those explored in this case can take several months to accomplish.

After consultation with our client agencies and our own IT personnel, we have concluded that the revised requests, as written, present a production demand that is impossible to complete in time for an early 2018 trial or for the Court's schedule for expert disclosures. This conclusion is in addition to our assessment that the requests frequently call for documents that are protected from disclosure under various privileges and protections. Plaintiffs' revisions make no effort to address Federal Defendants' previously-stated objections to the breadth of the requests' defined terms. And the requests themselves are not tailored to the discrete factual disputes staked out in the parties' respective pleadings. Magistrate Coffin expressed his view that trial in this case turns on expert witness testimony, not document discovery or fact witnesses. Plaintiffs' commitment to serve their expert reports by early July and no later than July 31, 2017, reflects an acknowledgment that their experts do not require the documents sought in the revised requests for production (or, for that matter, any of their discovery requests) for purposes of drafting their reports. Given these dynamics, we fail to see how Plaintiffs' revised requests are drafted with an eye toward "the importance of the issues at stake in the action," "the importance of discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P 26(b).

II. *Fact discovery should be conducted in an orderly manner that is compatible with the schedule for expert discovery and the Magistrate's stated preference for an early 2018 trial.*

While it is evident to Defendants that Plaintiffs are willing to serve their experts' reports during open fact discovery, it is equally evident to Defendants that such an approach is untenable for Defendants' experts. Fact discovery should be scheduled in coordination with the Court's schedule for Defendants' expert disclosures. Because the documents and Rule 30(b)(6) testimony provide facts that Federal Defendants' experts may rely upon in their reports, it is important that fact discovery be closed sufficiently in advance of Federal Defendants' October 13, 2017, expert report deadline so that Federal Defendants' experts may review and accommodate those facts in their analyses and resulting reports. To allow for this timing, Federal Defendants submit that the production of documents be completed by July 31, 2017. This is another reason why the requests need to be substantially narrowed. Relatedly, the completion of Rule 30(b)(6) testimony should be completed by August 15, 2017. This will allow sufficient time for Federal Defendants' experts to digest the material produced and the organizational testimony offered in advance of the current deadline for completing their reports.

III. *Federal Defendants' proposal for production of documents.*

For the reasons discussed in the previous two sections, we have asked the client agencies to project what document discovery they can complete by July 31, 2017. Because only a short

time has passed since the June 14 status conference that initiated this inquiry, the client agencies' analysis of this question is ongoing. Nevertheless, the agencies currently report as follows:

Agency	Report
Department of State	<ul style="list-style-type: none"> • Annual inventories of U.S. greenhouse gas emissions and sinks submitted to the United Nations Framework Convention on Climate Change (UNFCCC), from 1997 to the present • National Communications submitted every four years to the UNFCCC describing, <i>inter alia</i>, policies and measures adopted to address climate change, going back to 1997 • The 2020 greenhouse gas emissions reduction target submitted by the United States in 2010 • Biennial Reports submitted in 2014 and 2016 to the UNFCCC, describing, <i>inter alia</i>, progress towards the above-referenced 2020 emissions reduction target • A PowerPoint presentation delivered by the United States in May 2017 at a meeting of the parties to the UNFCCC in connection with a “multilateral assessment” of the above-referenced U.S. 2016 Biennial Report • The “intended nationally determined contribution” submitted by the United States in 2015 • The State Department’s public organizational chart • Executive Order 13653 and the Department’s Climate Change Adaptation plan developed in relation to 13653 • United Nations General Assembly Resolution A/RES/45/212 • The UNFCCC and the Senate Foreign Relations Committee report on a hearing on the ratification of the UNFCCC, which includes responses to questions for the record submitted by the executive branch and other materials submitted to Congress in relation to the ratification
Department of Defense	<ul style="list-style-type: none"> • Appendix C. 2013 Addendum to the DoD FY 2012 Climate Change Adaptation Roadmap • Department of Defense 2014 Climate Change Roadmap • Appendix 2: DoD FY 2012 Climate Change Adaptation Roadmap • Internal Distribution of the Department of Defense Climate Change Adaptation Roadmap, 2014 • DoD Directive 4715.AD, Climate Change Adaptation and Resilience • SECDEF Memo, Subject: Leadership in Environment, Energy and Economic Performance, January 6, 2010 • Climate and National Security Action Plan, December 27, 2016 • DEPSECDEF Memo, Subject: Presidential Memorandum on Climate Change and National Security, August 10, 2016 • U.S. Army Sustainability Campaign Plan, Sustainable Operations for a Secure Future, May 2010 • USA-VCSA Memo, Subject: Execution of the Army Sustainability Campaign Plan, March 4, 2011 • ASA (IE&E) Letter, Signed by Katherine Hammack (2016)

	<ul style="list-style-type: none"> • U.S. Army Sustainability Report, 2014 • U.S. Army Sustainability Report Annex, 2014 • U.S. Army Sustainability Report, 2012 • ASA (IE&E) Letter, Signed by Katherine Hammack, September 26, 2012 • Acting Deputy Under Secretary of Defense (Installations & Environment) Memo, Subject: DoD Climate Preparedness and Resilience Planning Pilots, October 29, 2014 • U.S. Navy Arctic Roadmap, October 2009 • U.S. Navy Climate Change Roadmap, April 2010 • Secretary of the Navy Instructions, Manuals, and Publications relating to energy conservation, alternative energy options, or climate change • Chief of Naval Operations Instructions and issuances relating to energy conservation, alternative energy options, or climate change • U.S. Navy reports submitted to the Department of Defense and Council on Environmental Quality pursuant to Executive Orders 13512 and 13693 • U.S. Army Corps of Engineers Strategic Sustainability Performance Plans, 2013, 2014, 2015 • U.S. Army Corps of Engineers Climate Change Adaptation Plan, 2014 • U.S. Army Corps of Engineers Coastal Program Guide – North Atlantic Coast Comprehensive Study, January 2015
Department of Agriculture	<ul style="list-style-type: none"> • 2010 USDA Climate Change Science Plan • Climate Change Impacts on Crop Insurance, May 2010 • USDA Risk Management Agency Climate Adaptation Plan 2014 • U.S. Agriculture and Forestry Greenhouse Gas Inventory: 1990-2013, Technical Bulletin No. 1943, September 2016 • USDA Building Blocks for Climate Smart Agriculture and Forestry, Implementation Plan and Progress Report, May 2016

We note that the willingness of the above-listed agencies to produce the above-referenced documents does not imply that Federal Defendants view these documents as relevant to a trial in this case. Nor does the identification of documents in the above list suggest or commit Federal Defendants to produce any other documents.

We cannot presently commit to produce documents by July 31 on behalf of the Executive Office of the President. “It is well established that ‘a President’s communications and activities encompass a vastly wider range of sensitive material than would be true of an ‘ordinary individual.’” *Cheney v. U.S. District Court*, 542 U.S. 367, 381 (2004) (quoting *United States v. Nixon*, 418 U.S. 683, 715 (1974)). Discovery against the President and his advisors, if it is to be permitted at all, must therefore be narrowly tailored to avoid interference with the President’s constitutional duties. *Id.* at 385-91. And the burden to tailor any discovery requests appropriately rests squarely on Plaintiffs, not the Executive Office of the President. *See id.* at 388. We will try to determine by our June 30, 2017 meet-and-confer whether the Executive Office of the President can commit to produce any documents by July 31. Plaintiffs, however,

should be prepared to identify which specific documents, if any, they believe to be critical to their case.

Discovery of electronically stored information poses unique challenges. While we began working with our client agencies before the June 14 status conference to identify custodians, explore repositories, and identify viable search terms, it is evident to us that this process cannot be completed in an orderly, reliable, or efficient manner in advance of an early 2018 trial date. While we are willing to explore with Plaintiffs whether a substantially narrowed search for electronically stored information relevant to disputed factual issues in the case could be completed in a manner consistent with an early 2018 trial, our position is that the compressed case schedule does not afford sufficient time to conduct a search of e-mail or other electronically stored information. We believe that the time spent negotiating an order for electronically stored information, therefore, would be wasted. Also, time and resources spent aligning the intricacies of electronic production would be unwarranted since there is insufficient time to conduct discovery of electronically stored information.

* * *

In sum, the wide-ranging discovery called for in Plaintiffs' revised requests for production is incompatible with the trial and expert discovery schedule, as well as Magistrate Coffin's admonitions at the June 14 status conference. In order to move the case forward to an early 2018 trial, fact discovery must be curtailed and completed so as not to upend the expert discovery work that Magistrate Coffin has repeatedly opined is the heart of trial in this case. We look forward to meeting and conferring with you as the parties work toward streamlining discovery in this case and preparing it for trial.

Sincerely,

/s/ Sean C. Duffy
Sean C. Duffy
Trial Attorney
U.S. Department of Justice

CC: Frank J. Singer
Peter Dykema

Exhibit 13 to Declaration of Sean C. Duffy

July 12, 2017

VIA EMAIL

Sean C. Duffy

Frank Singer

U.S. DEPARTMENT OF JUSTICE

ENVIRONMENT & NATURAL RESOURCES DIVISION

NATURAL RESOURCES SECTION

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Re: *Juliana v. United States*, 6:15-cv-01517-TC
Meet and confer related to Rule 30(b)(6) deposition matters for examination

Dear Sean and Frank,

As we agreed at our June 30, 2017 meet and confer, I attach a list of questions to narrow the matters for examination for the Rule 30(b)(6) depositions. These questions are not intended to replace the original matters for examination in the Rule 30(b)(6) notices, but rather provide the respective agencies with additional guidance on the matters that Plaintiffs will discuss in more detail so that you may more easily identify deponents.

At the June 30 meet and confer, you indicated the affirmative defenses that Defendants raised in their answer are legal defenses and Defendants do not intend to present facts at trial to support their affirmative defenses, with the exception of taking the depositions of Plaintiffs for purposes of arguing standing. Based on these assurances, Plaintiffs will remove from the Rule 30(b)(6) deposition notices the matter for examination that goes to the factual bases for each affirmative defense asserted by the agencies in their answer.

Finally, during our call on July 13, can you please confirm dates for our team to review the NARA documents this month at the various facilities. We are available to travel the week of July 16. We are unsure why that is taking so long.

Regards,

/s/

JULIA A. OLSON

Cc: Philip Gregory
Daniel Galpern

QUESTIONS TO GUIDE IDENTIFICATION OF RULE 30(b)(6) DEPONENTS
AS OF JULY 12, 2017

Department of State

- How does the State Department make decisions about what temperature targets or atmospheric CO₂ concentration to advocate for in international climate change negotiations?
- Has the State Department ever considered what concentration of CO₂ in the atmosphere would avoid endangerment of human health and welfare for current and future generations? If not, does the State Department know who within the federal government has?
- Has the State Department ever considered what level of global warming above pre-industrial temperatures would endanger human health and welfare for current and future generations? If not, does the State Department know who within the federal government has?
- Has the State Department ever considered what level of ocean warming and acidification would endanger human health and welfare for current and future generations?
- Is the State Department using social cost of carbon analysis? What social cost of carbon analysis (or analyses) is the State Department using? How long has the State Department used each social cost of carbon analysis? How has each social cost of carbon analysis impacted State Department decisions?
- Is the State Department using discounting analysis on issues relating to climate change and energy policy? What discounting analysis (or analyses) on issues relating to climate change and energy policy is the State Department using? How long has the State Department used discounting analysis on issues relating to climate change and energy policy? How has each discounting analysis impacted State Department decisions on issues relating to climate change and energy policy?
- How does the State Department consider the climate change impacts resulting from the issuance of Presidential Permits for the transportation of fossil fuels across international borders? Does the State Department consider how those decisions will be consistent with temperature and CO₂ targets it has identified as necessary to protect our country's climate system and U.S. citizens?

Department of Energy (“DOE”)

- What type of studies and analyses has the DOE done on transitioning the U.S. energy system off of fossil fuels to renewable energy sources? When did it begin doing this research? What were its findings and recommendations?
- Is the DOE currently engaged in studies and analyses on transitioning the U.S. energy system off of fossil fuels to renewable energy sources? If so, who is engaged in these studies and analyses? When does the DOE expect to conclude work on each study and analysis?
- Has the DOE considered what the national energy mix could look like if our country completely moved away from fossil fuel energy sources?
- Has the DOE considered the work of Mark Jacobson and his co-authors, which outlines plans to transition off of fossil fuels by mid-century?
- What role does the DOE play in formulating the current U.S. national energy policy and the national energy mix, including the America First Energy Plan? Who in the DOE has been involved in formulating the current U.S. national energy policy and the national energy mix, including the America First Energy Plan? When did the DOE begin playing a role in the national energy plans of the U.S.? In formulating the current U.S. national energy policy and the national energy mix, including the America First Energy Plan, did the DOE consider how those decisions will be consistent with temperature and CO₂ targets it has identified as necessary to protect our country’s climate system and U.S. citizens?
- How does the DOE support fossil fuel extraction, transportation, and combustion through research and development, funding, subsidies, or other means? Does the DOE consider how those decisions will be consistent with temperature and CO₂ targets it has identified as necessary to protect our country’s climate system and U.S. citizens?
- How does the DOE support the use of renewable energy sources through research and development, funding, subsidies, or other means? Does the DOE consider how those decisions will be consistent with temperature and CO₂ targets it has identified as necessary to protect our country’s climate system and U.S. citizens?
- How does the DOE support energy efficiency standards for appliances and building efficiency standards? Does the DOE set efficiency standards in order to be consistent with CO₂ and temperature targets set by the U.S. government? Does the DOE consider CO₂ and temperature targets in setting efficiency standards?
- Has the DOE ever considered what concentration of CO₂ in the atmosphere would avoid endangerment of human health and welfare for current and future generations? If not, does the DOE know who within the federal government has?
- Has the DOE ever considered what level of global warming above pre-industrial temperatures would endanger human health and welfare for current and future generations? If not, does the DOE know who within the federal government has?
- Is the DOE using social cost of carbon analysis? What social cost of carbon analysis (or analyses) is the DOE using? How long has the DOE used each social cost of carbon analysis? How has each social cost of carbon analysis impacted DOE decisions?
- Is the DOE using discounting analysis on issues relating to climate change and energy policy? What discounting analysis (or analyses) on issues relating to climate change and energy policy is the DOE using? How long has the DOE used discounting analysis on

issues relating to climate change and energy policy? How has each discounting analysis impacted DOE decisions on issues relating to climate change and energy policy?

Department of Agriculture (“USDA”)

- Has the USDA ever considered what concentration of CO₂ in the atmosphere would avoid endangerment of human health and welfare for current and future generations? If not, does the USDA know who within the federal government has?
- Has the USDA ever considered what level of global warming above pre-industrial temperatures would endanger human health and welfare for current and future generations? If not, does the USDA know who within the federal government has?
- Has the USDA done studies or analyses on how different atmospheric concentrations of CO₂ will impact the natural resources under its regulatory jurisdiction?
- Has the USDA done studies or analyses on how different levels of global warming will impact the natural resources under its regulatory jurisdiction?
- Has the USDA done studies or analyses on the ability and capacity of biotic resources, including, but not limited to, forests, wetlands, and agricultural areas, to sequester CO₂?
- What types of risks, including financial risks, does the USDA anticipate climate change impacts will pose to agriculture and public lands in the U.S. The term “climate change impacts” includes, but is not limited to, floods, drought, heat waves, and extreme weather events.
- How does the USDA support fossil fuel extraction, transportation, and combustion? Does USDA consider how those decisions will be consistent with temperature and CO₂ targets it has (or other government agencies have) identified as necessary to protect the climate system and U.S. citizens?
- Is the USDA using social cost of carbon analysis? What social cost of carbon analysis (or analyses) is USDA using? How long has USDA used each social cost of carbon analysis? How has each social cost of carbon analysis impacted USDA decisions on authorizing, leasing, permitting, or otherwise allowing for coal, oil, and gas mining and production on federal lands?
- Is the USDA using discounting analysis on issues relating to climate change and energy policy? What discounting analysis (or analyses) on issues relating to climate change and energy policy is the USDA using? How long has the USDA used discounting analysis on issues relating to climate change and energy policy? How has each discounting analysis impacted USDA decisions on issues relating to climate change and energy policy?

Department of Transportation (“DOT”)

- Has the DOT ever considered what concentration of CO₂ in the atmosphere would avoid endangerment of human health and welfare for current and future generations? If not, does the DOT know who within the federal government has?
- Has the DOT considered what level of global warming above pre-industrial temperatures would endanger human health and welfare for current and future generations? If not, does the DOT know who within the federal government has?
- What studies and research has the DOT done to consider the technical feasibility of transitioning the transportation sector away from the internal combustion engine and fossil fuels towards electric and/or hydrogen-powered vehicles? When did the DOT begin conducting these studies and research? What were the findings and recommendations of each study and research that has considered the technical feasibility of transitioning the transportation sector away from the internal combustion engine and fossil fuels towards electric and/or hydrogen-powered vehicles?
- Has the DOT developed plans, models, or analyses regarding the national transportation system and ways to move it away from fossil fuels? What plans, models, and analyses has DOT developed regarding the national transportation system and ways to move it away from fossil fuels? What were the findings or conclusions of each plan, model, or analysis regarding the national transportation system and ways to move it away from fossil fuels?
- What, if anything, has the DOT done to transition the transportation sector away from the internal combustion engine and fossil fuels?
- What factors does the DOT consider when setting fuel economy standards? Does the DOT consider climate change when setting fuel economy standards? If so, how does the DOT consider climate change when setting fuel economy standards? When setting fuel economy standards, does the DOT consider how those decisions will be consistent with temperature and CO₂ targets it has (or other government agencies have) identified as necessary to protect our country’s climate system and U.S. citizens?
- Is the DOT using social cost of carbon analysis? What social cost of carbon analysis (or analyses) is the DOT using? How long has the DOT used each social cost of carbon analysis? How has each social cost of carbon analysis impacted DOT decisions?
- Is the DOT using discounting analysis on issues relating to climate change and energy policy? What discounting analysis (or analyses) on issues relating to climate change and energy policy is the DOT using? How long has the DOT used discounting analysis on issues relating to climate change and energy policy? How has each discounting analysis impacted DOT decisions on issues relating to climate change and energy policy?

Department of Interior (“DOI”)

- Has the DOI ever considered what concentration of CO₂ in the atmosphere would avoid endangerment of human health and welfare for current and future generations? If not, does the DOI know who within the federal government has?
- Has the DOI ever considered what level of global warming above pre-industrial temperatures would endanger human health and welfare for current and future generations? If not, does the DOI know who within the federal government has?
- What role does the DOI play in formulating the current U.S. national energy policy and the national energy mix, including the America First Energy Plan? Who in the DOI has been involved in formulating the current U.S. national energy policy and the national energy mix, including the America First Energy Plan? When did the DOI begin playing a role in the national energy plans of the U.S.? In formulating the current U.S. national energy policy and the national energy mix, including the America First Energy Plan, did the DOI consider how those decisions will be consistent with temperature and CO₂ targets it has identified as necessary to protect our country’s climate system and U.S. citizens?
- How does the DOI support fossil fuel extraction, transportation, and combustion through research and development, funding, subsidies, or other means? Does the DOI consider how those decisions will be consistent with temperature and CO₂ targets it has identified as necessary to protect our country’s climate system and U.S. citizens?
- How does the DOI support the use of renewable energy sources through research and development, funding, subsidies, or other means? Does the DOI consider how those decisions will be consistent with temperature and CO₂ targets it has identified as necessary to protect our country’s climate system and U.S. citizens?
- Has the DOI considered how permitting fossil fuel extraction will worsen climate change and negatively impact the prospects of survival for the polar bear, wolverine, and other threatened or endangered species? If so, how has the DOI considered how permitting fossil fuel extraction will worsen climate change and negatively impact the prospects of survival for the polar bear, wolverine, and other threatened or endangered species? Is the DOI currently considering how permitting fossil fuel extraction will worsen climate change and negatively impact the prospects of survival for the polar bear, wolverine, and other threatened or endangered species?
- Has the DOI conducted any studies or analyses on how different atmospheric concentrations of CO₂, above pre-industrial temperatures, will impact the natural resources under its regulatory jurisdiction?
- Has the DOI conducted any studies or analyses on how different levels of global warming above pre-industrial temperatures, will impact the natural resources under its regulatory jurisdiction?
- Has the DOI done studies or analyses on the ability and capacity of biotic resources like forests, wetlands, and rangeland to sequester CO₂? If so, what studies or analyses has the DOI done on the ability and capacity of biotic resources like forests, wetlands, and rangeland to sequester CO₂? Who in the DOI worked on the studies or analyses on the ability and capacity of biotic resources like forests, wetlands, and rangeland to sequester CO₂?

- Is the DOI using social cost of carbon analysis? What social cost of carbon analysis (or analyses) is the DOI using? How long has the DOI used each social cost of carbon analysis? How has each social cost of carbon analysis impacted DOI decisions?
- Is the DOI using discounting analysis on issues relating to climate change and energy policy? What discounting analysis (or analyses) on issues relating to climate change and energy policy is the DOI using? How long has the DOI used discounting analysis on issues relating to climate change and energy policy? How has each discounting analysis impacted DOI decisions on issues relating to climate change and energy policy?

Environmental Protection Agency (“EPA”)

- Has the EPA ever considered what concentration of CO₂ in the atmosphere would avoid endangerment of human health and welfare for current and future generations? If not, does the EPA know who within the federal government has?
- Has the EPA ever considered what level of global warming above pre-industrial temperatures would endanger human health and welfare for current and future generations? If not, does the EPA know who within the federal government has?
- Has the EPA ever conducted a study or analysis of what the limits should be on annual U.S. CO₂ emissions in order to be consistent with the best available science on keeping atmospheric CO₂ concentrations and rising temperatures within limits to avoid endangering human health and welfare for current and future generations? If so, what is the best available science relied upon by EPA to both establish the CO₂ and temperature targets and the corresponding emissions limits?
- Does EPA consider how its permitting authorizing greenhouse gas pollution are consistent with best available science and temperature and CO₂ targets it has (or other government agencies have) identified as necessary to protect our country’s climate system and U.S. citizens or prevent the endangerment of human health and welfare for current and future generations? If so, who performed these analyses? If so, where are these analyses? Have these analyses ever been made available for public review?
- Does EPA consider how its regulatory decisions authorizing greenhouse gas pollution and regulating sources of greenhouse gas pollution are consistent with best available science and temperature and CO₂ targets it has (or other government agencies have) identified as necessary to protect our country’s climate system and U.S. citizens or prevent the endangerment of human health and welfare for current and future generations? If so, who performed these analyses? If so, where are these analyses? Have these analyses ever been made available for public review?
- Has EPA done studies or analyses on the capacity of biotic drawdown in the U.S. to sequester CO₂? Who conducted the studies and analyses on the capacity of biotic drawdown in the U.S. to sequester CO₂? What were the findings and recommendations?
- Has the EPA ever considered what requirements should be placed on U.S. biotic sequestration resources in order to be consistent with the best available science on keeping atmospheric CO₂ concentrations and rising temperatures within limits that would avoid endangering human health and welfare for current and future generations? If so, what is the best available science relied upon by EPA regarding biotic sequestration? Who conducted the studies and regarding biotic sequestration? What were the findings and recommendations?
- What studies and analyses has the EPA done on transitioning the U.S. energy system off of fossil fuels or to renewable energy sources? Who conducted the studies and analyses on transitioning the U.S. energy system off of fossil fuels or to renewable energy sources? What were the findings and recommendations?
- Has the EPA considered the work of Mark Jacobson and his co-authors, which outlines plans to transition off of fossil fuels by mid-century? Who considered the work of Mark Jacobson and his co-authors, which outlines plans to transition off of fossil fuels by mid-century? What were the findings and recommendations?

- Has the EPA considered what the national energy mix could look like if we completely moved away from fossil fuel energy sources? Who considered what the national energy mix could look like if we completely moved away from fossil fuel energy sources? What were the findings and recommendations?
- What role does the EPA play in formulating the current U.S. national energy policy and the national energy mix, including the America First Energy Plan? Who in the EPA has been involved in formulating the current U.S. national energy policy and the national energy mix, including the America First Energy Plan? When did the EPA begin playing a role in the national energy plans of the U.S.? In formulating the current U.S. national energy policy and the national energy mix, including the America First Energy Plan, did the EPA consider how those decisions will be consistent with temperature and CO₂ targets it has identified as necessary to protect our country's climate system and U.S. citizens?
- Has the EPA used studies and analysis to evaluate the possibility of setting a National Ambient Air Quality Standard ("NAAQS") for CO₂? What studies and analysis has the EPA used to evaluate the possibility of setting a NAAQS for CO₂? Has the EPA evaluated what level of atmospheric CO₂ would be appropriate for a NAAQS? If so, what were the results of the EPA evaluation on the level of atmospheric CO₂ that would be appropriate for a NAAQS? Who conducted the EPA evaluation on the level of atmospheric CO₂ that would be appropriate for a NAAQS? Has the EPA done an analysis regarding the 2009 petition by the Center for Biological Diversity for a NAAQS of 350 ppm? If so, what were the results of the EPA analysis regarding the 2009 petition by the Center for Biological Diversity for a NAAQS of 350 ppm? Who conducted the EPA analysis regarding the 2009 petition by the Center for Biological Diversity for a NAAQS of 350 ppm? Why is there no NAAQS rulemaking for a NAAQS of 350 ppm?
- Is the EPA using social cost of carbon analysis? What social cost of carbon analysis (or analyses) is the EPA using? How long has the EPA used each social cost of carbon analysis? How has each social cost of carbon analysis impacted EPA decisions?
- Is the EPA using discounting analysis on issues relating to climate change and energy policy? What discounting analysis (or analyses) on issues relating to climate change and energy policy is the EPA using? How long has the EPA used discounting analysis on issues relating to climate change and energy policy? How has each discounting analysis impacted EPA decisions on issues relating to climate change and energy policy?

Department of Defense (“DOD”)

- Has the DOD ever considered what concentration of CO₂ in the atmosphere would avoid endangerment of human health and welfare for current and future generations? If not, does the DOD know who within the federal government has?
- Has the DOD ever considered what level of global warming above pre-industrial temperatures would endanger human health and welfare for current and future generations? If not, does the DOD know who within the federal government has?
- Has the Navy considered how different levels of CO₂ in the atmosphere, or different levels of global warming above pre-industrial temperatures, will impact the Arctic sea ice? Who conducted the studies and analyses on how different levels of CO₂ in the atmosphere, or different levels of global warming above pre-industrial temperatures, will impact the Arctic sea ice? What were the findings and recommendations?
- What type of studies and analyses has the DOD done on transitioning the U.S. military away from fossil fuels and towards renewable energy sources? How quickly can this be technically be accomplished? Who conducted the studies and analyses on transitioning the U.S. military away from fossil fuels and towards renewable energy sources? What were the findings and recommendations?
- Has the DOD considered or done studies on how climate change, and the accompanying sea level rise, will result in the relocation of U.S. citizens/communities and U.S. military installations? Does the DOD have projections on the scale of relocation necessary for different amounts of sea level rise and the estimated timing of that relocation? Who conducted the studies and analyses on how climate change, and the accompanying sea level rise, will result in the relocation of U.S. citizens/communities and U.S. military installations? What were the findings and recommendations?
- Does the DOD know that burning fossil fuels was not in the public interest and that transitioning to renewable energy resources would better protect U.S. citizens? When did the DOD first learn that burning fossil fuels was not in the public interest and that transitioning to renewable energy resources would better protect U.S. citizens?
- Does DOD’s Army Corps of Engineers consider how its permitting and regulatory decisions regarding fossil fuel infrastructure and greenhouse gas pollution are consistent with best available science and temperature and CO₂ targets it has (or other government agencies have) identified as necessary to protect the climate system and U.S. citizens or prevent the endangerment of human health and welfare for current and future generations? If so, who conducted these analyses? If so, where are these analyses? Have these analyses ever been made available for public review?
- Is the DOD using social cost of carbon analysis? What social cost of carbon analysis (or analyses) is the DOD using? How long has the DOD used each social cost of carbon analysis? How has each social cost of carbon analysis impacted DOD decisions?
- Is the DOD using discounting analysis on issues relating to climate change and energy policy? What discounting analysis (or analyses) on issues relating to climate change and energy policy is the DOD using? How long has the DOD used discounting analysis on issues relating to climate change and energy policy? How has each discounting analysis impacted DOD decisions on issues relating to climate change and energy policy?

Department of Commerce (“DOC”)

- Has the DOC ever considered what concentration of CO₂ in the atmosphere would avoid endangerment of human health and welfare for current and future generations? If not, does the DOC know who within the federal government has?
- Has the DOC ever considered what level of global warming above pre-industrial temperatures would endanger human health and welfare for current and future generations? If not, does the DOC know who within the federal government has?
- What role does the DOC play in formulating the current U.S. national energy policy and the national energy mix, including the America First Energy Plan? Who in the DOC has been involved in formulating the current U.S. national energy policy and the national energy mix, including the America First Energy Plan? When did the DOC begin playing a role in the national energy plans of the U.S.? In formulating the current U.S. national energy policy and the national energy mix, including the America First Energy Plan, did the DOC consider how those decisions will be consistent with temperature and CO₂ targets it has identified as necessary to protect our country’s climate system and U.S. citizens?
- What studies and analyses has the DOC done on transitioning the U.S. energy system to renewable energy sources? Who conducted the studies and analyses that the DOC has done on transitioning the U.S. energy system to renewable energy sources? What were the findings and recommendations?
- Has the DOC considered the work of Mark Jacobson and his co-authors, which outlines plans to transition off of fossil fuels by mid-century? Who conducted the studies and analyses on the work of Mark Jacobson and his co-authors, which outlines plans to transition off of fossil fuels by mid-century? What were the findings and recommendations?
- Has the DOC considered how ocean warming and ocean acidification will impact the survival and recovery of ringed seals, coral species and coral reefs, listed salmonids, and the health of those species’ habitats, within the U.S.? Who conducted the studies and analyses on how ocean warming and ocean acidification will impact the survival and recovery of ringed seals, coral species and coral reefs, listed salmonids, and the health of those species’ habitats, within the U.S.? What were the findings and recommendations?
- Has the DOC ever considered what level of atmospheric CO₂, ocean warming, and ocean acidification would adversely impact the survival and recovery of ringed seals, coral species and coral reefs, listed salmonids, and the health of those species’ habitats, within the U.S.? Who conducted the studies and analyses on what level of atmospheric CO₂, ocean warming, and ocean acidification would adversely impact the survival and recovery of ringed seals, coral species and coral reefs, listed salmonids, and the health of those species’ habitats, within the U.S.? What were the findings and recommendations?
- Does the DOC consider how its permitting and regulatory decisions regarding greenhouse gas pollution are consistent with best available science and temperature and CO₂ targets it has (or other government agencies have) identified as necessary to protect the climate system and U.S. citizens or protect listed species from extinction? If so, who conducted these analyses? If so, where are these analyses? Have these analyses ever been made available for public review?

- Is the DOC using social cost of carbon analysis? What social cost of carbon analysis (or analyses) is the DOC using? How long has the DOC used each social cost of carbon analysis? How has each social cost of carbon analysis impacted DOC decisions?
- Is the DOC using discounting analysis on issues relating to climate change and energy policy? What discounting analysis (or analyses) on issues relating to climate change and energy policy is the DOC using? How long has the DOC used discounting analysis on issues relating to climate change and energy policy? How has each discounting analysis impacted DOC decisions on issues relating to climate change and energy policy?

Exhibit 14 to Declaration of Sean C. Duffy

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BEFORE THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

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KELSEY CASCADIA ROSE JULIANA, :
XIUHTEZCATL TONATIUH M., :
through his Guardian TAMARA :
ROSKE-MARTINEZ, et. al, : Case Number
Plaintiffs, : 6:15-cv-01517-TC
vs. :
THE UNITED STATES OF AMERICA, :
DONALD TRUMP, in his official :
capacity as President of the :
United States, et al., :
Defendants. :

- - - - - x

VIDEOTAPED DEPOSITION OF JAMES MICHAEL KUPERBERG

Washington, D.C.

Thursday, July 20, 2017

REPORTED BY:

SARA A. WICK, RPR, CRR

1 First A Budget Blueprint to Make America Great
2 Again" Office of Management and Budget document?

3 A It appears to be.

4 Q Did USGCRP have any role in the
5 development of this document? 15:05:03

6 A No, we did not.

7 Q Since this document was generated, have
8 you had any discussions with anyone about the
9 contents of this document?

10 A Yes, I have. 15:05:27

11 Q Anyone with the Executive Office of the
12 President?

13 A Yes, I have.

14 Q Who have you had discussions with?

15 A I've had discussions with my division of 15:05:41
16 the -- the Environment and Energy Division at OSTP,
17 I've had discussions with OMB about the budget.

18 Q And in your discussions with OMB about the
19 budget, what topic or topics did you discuss?

20 MR. SINGER: Hold on before you answer 15:06:10
21 that.

22 I have two concerns. One is, I'm

1 concerned that we're getting into subject matter
2 that could involve executive privilege, which is the
3 President's to raise and not necessarily Justice's
4 right here.

5 And second, I have a concern about 15:06:27
6 relevance to the lawsuit, what the budget -- what a
7 proposed budget's relevance is to the lawsuit.

8 So I don't want to instruct you not to
9 answer on executive privilege.

10 But I just would, one, want to know what, 15:06:40
11 the relevance of this is, and two, if it's something
12 that you feel you do need to pursue, perhaps we need
13 to try to find out whether the Executive Office of
14 the President wants to exert executive privilege
15 over communications that the witness has had with 15:06:55
16 the Executive Office of the President. And we can
17 try to make a timeline to make a decision on that.

18 MR. GREGORY: Okay. Well, A, I don't
19 think it's appropriate under the Federal Rules to
20 instruct on the grounds of relevance, particularly 15:07:12
21 discussions regarding budget -- discussions
22 regarding the budget for his agency.

1 detailed --

2 A I would call it the detailed.

3 Q Okay. And then we'll call this the --

4 A This is commonly called the skinny budget.

5 Q Okay. We'll call it the skinny budget and 15:40:06
6 the detailed budget. Is that --

7 A Sure. Thank you.

8 Q And have you had discussions with anyone
9 from -- just to clarify, because I'm going to --
10 have you had discussions with anyone from the 15:40:20
11 Executive Office of the President about the more
12 detailed budget?

13 A Yes, I have.

14 MR. GREGORY: And you would give the same
15 instruction? 15:40:29

16 MR. SINGER: Right. Don't reveal details.
17 We need to vet it. But the existence of the
18 communication, we can --

19 MR. GREGORY: Yeah, because I just didn't
20 want to be limited to the America First. Okay. 15:40:37

21 BY MR. GREGORY:

22 Q And then have you had discussions at

1 A No.

2 Q In your capacity as a member of the OSTP,
3 were you present for any conversations between the
4 Executive Office of the President and John Holdren
5 about the climate action plan? 16:44:23

6 A Yes.

7 Q And what was discussed with John Holdren
8 about the climate action plan in conversations where
9 you were present?

10 MR. SINGER: Before you answer that, I 16:44:41
11 need a little bit of background on who John Holdren
12 is.

13 THE WITNESS: John Holdren was the former
14 director of OSTP, eight years under the Obama
15 Administration. 16:44:52

16 MR. SINGER: Okay. I think that falls
17 under the bucket of the executive privilege. It's
18 communications with EOP. I think we can add that to
19 the category of things that I need to raise with
20 White House counsel. Oh, he's assistant to the 16:45:06
21 President. Okay. So I think we need to add that to
22 the group of discussions that I need to raise with

1 White House counsel as to whether the President
2 wants to assert the executive privilege on that or
3 not.

4 BY MR. GREGORY:

5 Q To your knowledge, did OSTP give CEQ 16:45:23
6 advice on by how much carbon emissions should be
7 reduced to protect the Arctic?

8 MR. SINGER: Again, I think that's calling
9 for communications between components of the
10 Executive Office, between CEQ and OSTP. And that 16:45:39
11 will fall both under executive privilege and to the
12 extent it goes for a potential decision on policy by
13 either CEQ or OSTP. It could be deliberative
14 process.

15 But you know -- actually, you're asking 16:45:54
16 whether communications exist?

17 MR. GREGORY: Yes.

18 MR. SINGER: Let's get that answer first,
19 and then I'll assert the privilege as to content.

20 But if you know whether communications
21 exist, you can answer whether you know if
22 communications exist.