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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 PROCEEDINGS

2 WEDNESDAY, JUNE 14, 2017

3 THE CLERK: Please be seated.

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

7 THE COURT: All right. Good morning everyone.

8 THE ATTORNEYS: Good morning, Your Honor.

9 THE COURT: I hope everybody had a good trip out
10 here.

11 I am getting some feedback.

12 THE CLERK: Go ahead, Judge.

13 THE COURT: Okay. Is it okay now?

14 THE CLERK: Yes.

15 THE COURT: All right. I have the joint status
16 report that was filed on June 12th.

17 So who wants to lead off here?

18 MS. OLSON: Good morning, Your Honor. This is
19 Julia Olson, counsel for plaintiffs.20 And I wanted to start by just flagging two issues
21 that we are having in the case in terms of preparing for
22 trial.23 The first is that, thus far, the federal
24 defendants have not responded substantively to any of our
25 discovery requests, and despite the fact that the court has

1 denied their request for a stay in the case, they are, in
2 some respects, not conducting discovery or trial preparation
3 in the way that we think is needed. That's one issue.

4 The second issue is that when we are doing our
5 meet and confer meetings with the federal defendants,
6 there's not someone who is participating in those calls who
7 has decision-making authority.

8 THE COURT: Who has what authority?

9 MS. OLSON: Decision-making authority. And so
10 it's very difficult in our meet and confer meetings to make
11 progress and have decisions be made.

12 So those are two overarching themes that I wanted
13 to flag for the court before we go to the specific issues.

14 MR. DUFFY: Your Honor, this is Sean Duffy for the
15 United States.

16 I would disagree with both of those points. In
17 fact, we are working with the agencies that have been
18 propounded with requests for production to provide a
19 response to those.

20 We have said in the past that the requests are
21 very broad. They continue to be very broad. But we are
22 nonetheless moving ahead trying to identify custodians who
23 are likely to have relevant, substantive, non-privileged
24 information that would be responsive to the requests.

25 And also, I would add that we believe that we need

1 to meet and confer with the plaintiffs still to try to
2 narrow these requests to something we can actually respond
3 to.

4 And with respect to the second point, I am not
5 sure I understand where plaintiffs are coming from when they
6 say that there's not somebody with decision-making authority
7 at the meet and confers. In terms of narrowing these
8 requests, both I and Mr. Frank Singer, my cocounsel, we can
9 do that. And we have brought in our technical folks to
10 these meetings. We brought in people who worked on other
11 cases that are similar in scope. And we are prepared to do
12 that.

13 THE COURT: Well, let me make a comment here.

14 Sometimes I feel that I am on a journey and I
15 don't have a map to my destination because I don't know what
16 that destination is.

17 To explain, when the intervenors first came into
18 the case, they told the court that they represented these
19 associations with various members and they were all unified
20 and spoke with the same -- with one voice.

21 Several years later that turns out not at all to
22 be the case, and because of the division, apparently, so the
23 court is told, within the ranks of membership of the
24 intervenors, they now have moved to withdraw from the case.

25 With respect to the government, I haven't gotten a

1 clear picture, with some exceptions, as to where the
2 government is going with their defense in this case. I
3 understand you have the legal defenses regarding the public
4 trust doctrine and the due process claim, and the court has
5 ruled that those claims should not be dismissed and that
6 they require a factual basis to be fully fleshed out and a
7 record to be developed at trial, which I understand the
8 government disagrees with, and that's the basis of the writ
9 to the Ninth Circuit. But pending the disposition of that
10 writ, this court has refused a stay of the trial
11 proceedings.

12 So I am at a loss to understand what other
13 defenses the government is going to present to the issues
14 that I understand to be at the heart of this case given the
15 government's admissions in their answers.

16 Is there human-induced climate change occurring,
17 and, if so, what's going to be the reasonable probability of
18 the habitability of the planet in however many years unless
19 changes are made, what changes need to be made to keep that
20 from happening. And that has always seemed, to me, to be
21 the subject matter for the experts to address.

22 So I have several times commented that, to me, the
23 most important evidence in the case would seem to be the
24 presentation of the expert testimony. And I have asked
25 several times, does the government deny that this is

1 happening, does the government apparently admit that it's
2 happening with the answer that the government filed? If so,
3 what evidence does the government intend to present at trial
4 regarding the issue?

5 And so without some designation from the
6 government as to what it believes to be the factual issues
7 that are in contention, I don't really have a framework to
8 address all the discovery requests that are being made.

9 If the issue is discovery requests that are
10 addressed to the state of knowledge of government officials
11 over the years, my question is, given the government's
12 admissions in the answer, to what extent is that relevant to
13 this case going forward because the plaintiffs aren't asking
14 for money damages. They are asking for prospective relief
15 going forward to be fashioned by the court.

16 So when the government knew what it knew is, to
17 me, secondary in importance to the issue of what does the
18 government know now given the government's admissions.

19 So having said that, can you folks give me some
20 guidance here as to what the document production requests,
21 other than being described in general terms, what are they
22 focused on and what the hang-up is in producing the
23 discovery that's being requested.

24 Does the government and all of its agencies speak
25 with one voice on this case, or, like the intervenors, do

1 they have different voices and different positions?

2 So if I am going to manage the discovery in this
3 case, I need some answers to some of these questions I have.

4 So Mr. Duffy.

5 MR. DUFFY: Sure. You have said a number of
6 things there, and I would first start off by --

7 THE COURT: I did.

8 MR. DUFFY: I would first start off by saying that
9 we agree with this description you have as we are on a
10 journey and it's not exactly clear where it's going to end.

11 But as far as I can tell, I agree with Your Honor
12 that this appears to me, given the amended complaint and the
13 answer, to be a case that's going to be guided by expert
14 testimony.

15 And something that just came into my mind while
16 you were speaking is that, yes, one of the things -- I think
17 meet and confer is important, and one of the things we could
18 confer on is to sit down with the plaintiffs and say, okay,
19 where are the actual disputes here.

20 And I think that would narrow things quite a bit.
21 And I think what we would find there is that that's really
22 where we need the expert testimony.

23 And so we are going to need to see their expert
24 reports, and then we need to talk to our experts because a
25 lot of these are technical issues and they are beyond my

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

1 process can be. You know, I assisted in managing discovery
2 in a criminal case involving the failure of the Sun West
3 Company here in Oregon and a prosecution of the CEO of Sun
4 West. And, I mean, one of the issues that comes up with
5 electronically stored databases is the voluminous nature of
6 the records, so much so that federal defender's submitted
7 something like a \$10 million budget to defend that case and
8 hired numerous experts to perform search engine requests,
9 *et cetera, et cetera.*

10 So it can be very tedious, very expensive, and
11 very time consuming, and so that's the basis of my question
12 in this case. To what extent is that sort of document
13 production essential to the pursuit of the case on the part
14 of the plaintiffs and relevant given that this is going to
15 be a court trial and given that the main thrust of the
16 plaintiffs' case is a request for prospective relief,
17 injunctive relief from the court going forward to remedy the
18 problems, assuming that liability is established at the
19 trial?

20 So Ms. Olson.

21 MS. OLSON: Thank you, Your Honor.

22 THE COURT: Could you help me there?

23 MS. OLSON: I think I can help you there.

24 We do not want millions and millions of documents,
25 and we are very open and willing to meet and confer with

1 counsel for the federal defendants to figure out how to
2 better articulate our request so that we can get at the more
3 precise documents that we are looking for.

4 THE COURT: Sure. Because if you can get precise,
5 for example, I want the memo dated October 16th, 1963 --

6 MS. OLSON: That's right.

7 And so one example of our effort to really provide
8 narrow requests relates to our requests related to the
9 documents that are in the National Archives where we have
10 given specific file folder numbers and boxes that these
11 documents live in with sort of the titles. And those are
12 very specific and limited.

13 And one issue that we are having with respect to
14 those NARA records is the Department of Justice is invoking
15 the Presidential Records Act and contending that that act
16 applies to our requests.

17 And we have done some research, and, actually,
18 under Section 2205 of that act, it provides that
19 presidential records shall be made available during court
20 proceedings if the court so orders.

21 So there's an exception both for the judiciary,
22 there's an exception for Congress, and there's an exception
23 for the president when access to the documents are needed
24 for proceedings.

25 And so what we would like is an order that says

1 these documents should be produced for the purposes of this
2 proceeding, and we are happy to have it be under a
3 protective order.

4 If there are privileges involved and there's a
5 privilege log of documents that can't be released, that's
6 fine as well.

7 But that's just one example of one way we could
8 get access to some documents fairly quickly, and we are
9 happy to even go to the facilities to review those documents
10 so that they don't have to convert them all to electronic
11 files.

12 THE COURT: So that's one nature of documents.

13 MS. OLSON: That's one type of document where we
14 have succeeded in providing very narrow requests.

15 And for the other requests, such as the briefings
16 on climate change to the president, we could talk about
17 that.

18 What we are looking for are specific
19 recommendations from science advisers or the experts on
20 climate change or energy policy making recommendations about
21 what should be done to address the problem, what kind of
22 standard should be set, and what kind of policy should be
23 put in place.

24 And so to the extent the federal defendants can
25 help us identify those specific documents and where they

1 reside, then we are very willing to narrow our requests in
2 that respect.

3 THE COURT: Okay. Tell me, what is the
4 significance and relevance of the historical accounts of,
5 let's say, for example, when President Johnson was informed
6 of the climate change issue? What's the relevance of that
7 to this particular case as opposed to what does the
8 government know now, especially given the government's
9 admissions, and what actions is the government taking now
10 after admitting they know of the climate change reality as
11 evidenced by their admissions?

12 So in terms of your requests for proactive,
13 prospective injunctive relief going forward, given that you
14 are not seeking money damages for what President Lyndon
15 Johnson did or didn't do knowing what he knew, so that's
16 what I am having trouble with.

17 MS. OLSON: Um-hmm. Your Honor, I think what we
18 have right now with the Trump Administration and the current
19 defendants is an ongoing violation of plaintiffs'
20 fundamental rights under the Constitution, an ongoing
21 obligation of the public trust obligations of the federal
22 defendants.

23 However, what has caused a substantial portion of
24 the climate change impacts we are seeing is the historic and
25 systemic actions of the federal government with the

1 knowledge that by creating a national energy system that's
2 reliant on fossil fuels it would lead to these consequences.

3 So it's a different case to come to the court and
4 argue that the Trump Administration has caused climate
5 change. The Trump Administration is continuing to enhance
6 and exacerbate the harm that prior administrations have
7 created.

8 And so I think telling that full story is very
9 important to this case, particularly as we go up on appeal
10 to the Ninth Circuit and eventually to the Supreme Court,
11 laying a factual basis for the long-standing knowledge and
12 violations of the rights of young people and future
13 generations.

14 THE COURT: That's fine. I am not going to tell
15 you how to try your case. But you do realize, do you not,
16 that the document production issue and being bogged down in
17 it is, in all probability, going to negatively impact your
18 desire to have an early trial setting as opposed to just
19 focusing on the expert testimony, which can cut through all
20 of that and just get to that, you know, main issue of the
21 case more expeditiously than gathering all of these
22 documents and other discovery would do.

23 MS. OLSON: Your Honor, and we understand that the
24 document production is a big issue right now, so we will
25 continue to meet and confer.

1 And then one other thing that we are doing is we
2 have noticed our 30(b)(6) depositions, and we are hopeful
3 that by deposing some of the defendant representatives on
4 particular issues, it will allow us to actually pull back on
5 some of those document requests because we will be able to
6 get to some of those answers and admissions that we are not
7 getting through the document production.

8 THE COURT: Okay. That's your choice. I mean,
9 this court is committed to trying to expedite this given the
10 urgency of the issues presented, but I can only do so much.

11 MS. OLSON: I appreciate that.

12 THE COURT: And we have to be realistic.

13 MS. OLSON: Yes.

14 THE COURT: And I understand the government's
15 issue about the -- what it takes in terms of hours,
16 *et cetera*, to research this and pull all the documents in
17 the request. Like I said, in the Sun West case, it was a
18 monumental task, and eventually that resulted in a plea and
19 it was kind of shortcut that way, but that's not going to
20 happen in this case.

21 MS. OLSON: So, Your Honor, in order to really put
22 some guideposts and deadlines to this journey that we are
23 talking about that we are on right now --

24 THE COURT: Okay.

25 MS. OLSON: -- with respect to experts, we have

1 some proposed dates, and I gave Paul a table.

2 THE COURT: I have got it.

3 MS. OLSON: And all of the counsel have this as
4 well.

5 So, first of all, we anticipate disclosing
6 probably two additional experts, perhaps four, but two
7 experts, and we can do that by June 23rd. So I wanted to
8 alert the court and the parties to that.

9 Secondly, during our last status conference, Your
10 Honor asked us to have our expert reports ready to produce
11 to defendants by July 1st.

12 THE COURT: Yes.

13 MS. OLSON: And July 1st happens to be a Saturday.

14 THE COURT: Okay.

15 MS. OLSON: And then we have a holiday period.

16 So we will be prepared to produce and serve on
17 defendants by July 5th the majority of our expert reports
18 that we have -- of the 11 experts we have disclosed to the
19 defendants already.

20 And I anticipate that we will have six or seven
21 and up to eight or nine of those reports ready by July 5th.

22 So we are making really good progress on that
23 front.

24 THE COURT: All right.

25 MS. OLSON: For a couple of our experts who have

1 been traveling and have had other commitments, we need some
2 additional time.

3 And so our proposal is for what I am calling Group
4 2 to produce those expert reports by July 31st. So by
5 July 31st, we will have produced all of our affirmative
6 expert reports and served those on the defendants.

7 THE COURT: All right.

8 MS. OLSON: Then also during the last status
9 conference, Your Honor gave -- was going to give the
10 defendants 45 days from the date they received our expert
11 reports to disclose their rebuttal experts.

12 And so we have calendared in this table the date
13 by which they would disclose experts who would be rebuttal
14 experts to Group 1 of our experts and then Group 2. And so
15 that's August 21st for their first round of disclosures;
16 September 14th for their second round of expert disclosures.

17 And then we have allocated an additional 30 days
18 for their expert reports to be served on us from those dates
19 of disclosure.

20 And then finally, after we receive their last set
21 of rebuttal expert reports on October 13th, we would agree
22 to do a very quick turnaround with any rebuttal reports on
23 our end and serve those by November 1st so that if we are
24 completed -- if we have completed the other discovery that
25 we are doing, we could have a trial date by December 4th

1 under the federal rules, having completed all of the expert
2 discovery and reports by November 1st.

3 THE COURT: Speaking of your experts, in looking
4 at the status report that was submitted, I have a question
5 about one of the experts.

6 You tell me that "Plaintiffs will be
7 substituting previously disclosed sequestration
8 expert Keith Paustian with Phil Robertson,
9 University Distinguished Professor of Ecosystem
10 Science at Michigan State. While Keith Paustian
11 agreed to be an expert for plaintiffs, he also
12 serves on a National Academy of Sciences
13 committee, and NAS lawyers would not allow him to
14 be an expert in this case while he serves on the
15 committee, despite his efforts to obtain their
16 permission."

17 So explain that to me. I didn't know being on a
18 committee disqualifies you from being a witness.

19 MS. OLSON: The attorneys for the National Academy
20 of Sciences told Dr. Paustian that they perceived it to be
21 improper or some sort of conflict for him to be serving as
22 an expert in this case and to serve on the committee that he
23 has agreed to -- previously agreed to serve on. And that's
24 the information I have about that.

25 THE COURT: Does the government have any

1 knowledge?

2 MR. DUFFY: I don't have any specific knowledge.
3 I just -- when I see National Academy of Sciences, the first
4 thing that pops into my mind is is that a federal entity, in
5 which case it may be -- I can certainly understand why it
6 may be improper for him to serve as an expert.

7 THE COURT: But that's a committee? Is that a
8 paid position? Is that -- do you know?

9 MR. DUFFY: I honestly don't know.

10 THE COURT: All right. Well --

11 MS. OLSON: We found an excellent expert to
12 provide testimony on that issue, so we are comfortable with
13 that, Your Honor.

14 THE COURT: Okay. That's fine. That's fine.

15 All right. So that's your proposed schedule.

16 Let me hear, then, from the government about the
17 plaintiffs' proposal.

18 MR. DUFFY: Well, I don't want to speak
19 definitively with respect to this schedule because I have
20 just received it but a few things that I can identify.

21 We have many deadlines in this case. Just as a
22 practical matter, two groups of experts proceeding on two
23 tracks is going to create further logistical complications
24 and two sets of deadlines.

25 But more to the point, I think, I don't know --

1 and, in fact, I don't think all the experts are going to
2 line up where you have got one to one each testifying on the
3 same things.

4 And so I would propose that we get all of their
5 expert reports, speak with our experts, and then produce our
6 disclosures. So that would be in the plaintiffs, the way
7 they framed it, when Group 2 would go because we are going
8 to want to know what their whole expert package is when we
9 are sitting down with our experts and talking with them.

10 THE COURT: So you would say all of your experts
11 are disclosed by September 14th?

12 MR. DUFFY: Well, yeah. I mean, we are going to
13 aim to meet that 45-day deadline. We agreed --

14 THE COURT: For all of them as opposed to 1 and 2?

15 MR. DUFFY: Yeah, in terms of identifying who our
16 experts are. Once we have the plaintiffs' complete expert
17 package, I think that will put us in a good position to
18 speak with our candidates and see who is willing to serve as
19 an expert in this case.

20 I am not going to comment on the other deadlines.
21 There is one that kind of pops out, though. We have the
22 rebuttal expert reports coming in on November 1 and then
23 trial on December 4th.

24 We are going to need to depose all of their
25 experts in that time frame, and I don't see any way that we

1 could possibly depose 13 or 14 experts, whatever the number
2 is, who are in, you know, various locations and at the same
3 time prepare for trial in a one-month time period. That
4 just jumps off the page at me as -- from my experience, I
5 have never done a case with that many experts, but it takes
6 time to prepare and do a deposition with an expert. These
7 are technical issues. And when we are talking about more
8 than a dozen, it's just an enormous amount of work and then
9 preparing for trial, usually after you depose the experts
10 and you have a clear sense as to what's going to happen at
11 trial.

12 THE COURT: Well, I understand. Quite frankly, if
13 we can get this case to trial by early next year, I think
14 under the circumstances that would be a very good
15 achievement. So --

16 MS. OLSON: Counsel, I just want to point out that
17 you have had most of the names of our experts since
18 March 24th. You will have all of our expert reports for our
19 affirmative experts by July 31st, and we are happy to begin
20 scheduling depositions for those experts as soon thereafter
21 as you want.

22 So you have had our experts, and I don't see that
23 there's a need for delay until November to do depositions.
24 We don't even know if we'll have any rebuttal expert reports
25 on November 1st.

1 THE COURT: Okay. Well, I think this schedule is
2 good progress. And so, like I said, if we can get this case
3 to trial by the early part of next year, I think that's a
4 very good achievement.

5 So I am not going to set a trial date today.

6 I do think that plaintiffs' proposal is something
7 that the court will adopt with the provision that instead of
8 defendants having to disclose their rebuttal experts in
9 stages, they can disclose their rebuttal experts on
10 September 14th.

11 And the rest of the schedule I will adopt with the
12 exception of the trial date, which I will not set at this
13 time.

14 MR. DUFFY: Your Honor, may I just comment a
15 little further on that because we really haven't had time to
16 talk this over? But when it comes to rebuttal expert
17 reports, I really want to talk to our experts and have them
18 have seen the initial reports before we set dates for
19 rebuttal.

20 I mean, among other things, we don't have any page
21 limits for the expert reports yet. I just -- it's -- I am
22 pre-committing people who are not me to producing a document
23 in response to another document that we have yet to see.

24 I just think that for now, at least, yeah, you
25 know, we have agreed, 45 days after we see their reports to

1 endeavor to produce our experts, but I am somewhat reluctant
2 to committing to rebuttal reports until we have actually
3 seen their reports.

4 When counsel says we have had the names of their
5 experts, true, we have had the names of their experts, but
6 really it's the reports that matter.

7 THE COURT: Tell your experts that the court wants
8 them to do the best they can. And if there's some good
9 cause that arises why some expert can't abide by this
10 schedule, you can always move the court for an extension.

11 MR. DUFFY: Okay. Thank you.

12 THE COURT: Do we need any input from the
13 intervenors today?

14 MR. VOLPE: Well, Your Honor --

15 THE COURT: You came all this way.

16 MR. VOLPE: I know, Your Honor.

17 THE COURT: I don't want to cut you off.

18 MR. VOLPE: It's good to see you, Your Honor.

19 THE COURT: Yeah, it's good to see you.

20 MR. VOLPE: Frank Volpe on behalf of the
21 intervenors.

22 So everyone is behaving as if we are not in the
23 case anymore, which is part of the point of our motion to
24 withdraw. However, we are still in the case as of today.

25 THE COURT: You are because the briefing is not

1 done on the motion to withdraw.

2 MR. VOLPE: Do you need to wait for our reply,
3 Your Honor, to --

4 THE COURT: I was going to wait for your reply,
5 yes.

6 MR. VOLPE: Okay. Then what I would ask is if we
7 could file a consolidated reply instead of filing a --

8 THE COURT: That's fine. I think the issues that
9 remain, since the plaintiffs really don't oppose you
10 withdrawing, are the conditions of withdrawal.

11 MR. VOLPE: Right, which we don't believe are
12 appropriate conditions.

13 THE COURT: That's what I am waiting for.

14 MR. VOLPE: You are waiting for that.

15 So the second set of motions to withdraw, replies
16 would be due on Thursday of next week.

17 So we would ask to extend the first motion to --
18 reply on the first motion to withdraw to the Thursday as
19 well. We'll file a consolidated reply.

20 THE COURT: That will be fine.

21 MR. VOLPE: Okay. And then we have discovery
22 obligations that are sitting there. We would ask to stay
23 those discovery obligations.

24 THE COURT: Yes, I will.

25 MR. VOLPE: Okay. And then I guess until the

1 court makes a decision on the motion to withdraw, we are
2 still in. We are getting communications from the parties,
3 which is fine. We are not weighing in on the substantive
4 issues at this point.

5 THE COURT: Okay. Tell me this: Is anybody -- on
6 the motion to withdraw, does anybody want oral argument or
7 could it be submitted on the briefing?

8 MR. VOLPE: No, Your Honor. I think submitting on
9 the briefing. I am surprised this is becoming as
10 controversial as it appears. It should be a fairly simple
11 decision from the court to let parties that have voluntarily
12 intervened into a case to voluntarily un-intervene from the
13 case as well.

14 MS. OLSON: Maybe we shouldn't have oral argument
15 right now.

16 MR. VOLPE: That's not oral argument. I was
17 making an observation.

18 So we are passengers on your journey, Your Honor.

19 THE COURT: Okay.

20 MR. VOLPE: We want out. We want out of the car.

21 THE COURT: Okay. You want off the bus. All
22 right.

23 MR. VOLPE: We want off the bus.

24 MS. OLSON: Your Honor, I have a question about
25 the process for that decision. Will that be considered a

1 dispositive decision that will go through the findings and
2 recommendations process?

3 THE COURT: No, because, I mean, it wasn't in the
4 first place when I let them in, so I don't see why it needs
5 to be when I let -- you know, when I rule on letting them
6 out.

7 MR. VOLPE: The only other clock that's running,
8 Your Honor, is the government has moved -- petitioned the
9 Ninth Circuit for mandamus. As a party, we would be
10 committed to either join that petition or file our own
11 petition.

12 We are willing to wait some time for the court to
13 make its decision, but if the court thinks it will be
14 October before --

15 THE COURT: No.

16 MR. VOLPE: -- you decide --

17 THE COURT: I will get it out soon.

18 MR. VOLPE: Okay.

19 THE COURT: As soon as the briefing is
20 concluded --

21 MR. VOLPE: All right, Your Honor. Thank you.

22 THE COURT: -- I will issue a ruling.

23 Okay.

24 MS. OLSON: Okay. Your Honor, may we move on to
25 the requests for admissions issue?

1 THE COURT: Yes.

2 MS. OLSON: Thank you. We served ten requests for
3 admissions on the Environmental Protection Agency and on the
4 Executive Office of the President, and they were the same
5 ten requests.

6 And in response, we received objections and no
7 substantive answers.

8 We have met and conferred with the federal
9 defendants on that, and they have agreed to separate out
10 their response.

11 I believe, Sean, correct me if I am wrong, that
12 you have agreed to separate out your responses for the EPA
13 and the Executive Office separately because the executive
14 privilege assertions may not apply to the EPA.

15 So what I would like is to set a date by which we
16 would have those separate responses so that we can decide
17 whether we need to move to compel substantive responses to
18 those requests for admissions.

19 MR. DUFFY: We can certainly file separate
20 responses. I -- yeah. I mean, we agreed on Friday that we
21 would talk to the agencies about this issue, and I think,
22 again, this is something we can meet and confer on. I mean,
23 if you are asking for separate responses, are we going to
24 reserve, you know, separate -- I ordinarily don't just agree
25 to respond to a document we haven't -- in the form we

1 haven't received it, but I think we can talk about this
2 issue.

3 THE COURT: Okay. You are here. And so after
4 this hearing this morning, if you would prefer, I can give
5 you a private conference room to meet and confer here in the
6 courthouse if you want to do that.

7 MR. DUFFY: Yeah. We are happy to do that. But
8 we do have -- like we met and conferred on Friday and came
9 up with a couple of action items, and so I don't know
10 that -- I mean, what I am saying is we have just conferred
11 and we have a couple things we are going to do.

12 For example, we agreed with respect to the
13 documents that are in the NARA facilities to provide the
14 plaintiffs with a draft confidentiality protective
15 agreement, and that's still outstanding.

16 And then there was something -- what did the
17 plaintiffs have?

18 *(Mr. Duffy conferred with cocounsel Mr. Singer.)*

19 MR. DUFFY: Oh, and the third set of requests for
20 production, these are the so-called Wayne Tracker e-mails,
21 we talked about those on Friday, and we explained to the
22 plaintiffs that we don't think that those go to anything of
23 probative value, and we have sort of stated our position.
24 And the plaintiffs agreed to provide us with a written
25 response to that explaining why that request -- why they

1 disagree with us on that issue.

2 And so we are happy to meet and confer today. I
3 am just pointing out that we have just done it and we have a
4 couple of things we need to get back to work on.

5 And specifically with these requests for
6 admissions that we are discussing, yeah, we need to sit down
7 and talk separately with the Executive Office of the
8 President and the EPA to see if there's any sort of
9 difference between them in their responses.

10 THE COURT: Sure. And, you know, you can always
11 file a motion for a protective order if you feel that some
12 request is irrelevant. And I don't have any of those that
13 have been filed to date in this case. So -- but that's
14 always an option, as you know, I am sure, for you.

15 Let me ask Ms. Olson, you know, I must confess, in
16 looking at the Wayne Tracker issue and the Rex Tillerson
17 deposition, given what I said before, how is that relevant,
18 especially since Mr. Tillerson is -- was not at the time a
19 government official, you know, in terms of the documents you
20 are seeking and the depositions you -- I think -- aren't you
21 taking his deposition based upon his position at Exxon as
22 opposed to Secretary of State?

23 MS. OLSON: Yes. Your Honor, we have not
24 re-noticed his deposition, and we are not intending to at
25 this time.

1 THE COURT: Oh, okay. Okay. I misunderstood.

2 MS. OLSON: Just to clear that up.

3 With respect to those e-mails, our first amended
4 complaint, Paragraph 178, which is a paragraph that was
5 denied by the federal defendants, we alleged that the United
6 States supports fossil fuel development by allowing industry
7 to avoid the true costs of their emissions from fossil
8 fuels.

9 In other paragraphs, we have alleged that there's
10 a policy and practice of the federal government to allow and
11 support the exploitation of fossil fuels.

12 And we believe that Secretary Rex Tillerson, when
13 he was leading at the American Petroleum Institute, when he
14 was the head of Exxon, that he was one of the central people
15 having those communications and influencing the decisions of
16 the federal defendants to support the fossil fuel industry
17 over alternative forms of energy.

18 And so we believe that that was one narrow request
19 in terms of one e-mail address pertaining to climate change
20 and energy policy that could be relevant to the facts of the
21 case.

22 And I think all it would take is asking the
23 secretary if he e-mailed from that e-mail address people
24 within the federal government to answer that question.

25 MR. DUFFY: Well, a couple things there.

1 First of all, plaintiffs have not alleged a
2 conspiracy between the fossil fuel industry and the United
3 States government in this case.

4 They have alleged things that -- you know, with
5 regard to federal policy.

6 And then you see the leap we make here. Then it's
7 information and belief. We think. It's not in the
8 complaint.

9 If they want to allege a conspiracy, if they had
10 such information, that would be a wholly totally different
11 case, and this is kind of the point we are trying to make.

12 And with respect to the request itself, again, I
13 am going to go back to the process issue. It doesn't ask
14 for us -- not that I could actually get an audience with the
15 Secretary of State, but plaintiffs aren't asking us to do
16 that. They are asking us to search the e-mail of every
17 federal employee to see if there's any e-mails going back
18 and forth and without any basis.

19 And so, you know, I don't want to keep hashing
20 this out. If we have to file for a protective order, we'll
21 file for a protective order. I just -- ordinarily I hope in
22 cases that the meet and confer process will kind of resolve
23 issues like that.

24 THE COURT: Yeah, I would encourage you to do
25 that, and I have given you whatever guidance I can give you

1 on the subject, and you know what my thoughts are about it,
2 so.

3 MS. OLSON: And we will meet and confer on that
4 issue, Your Honor.

5 But going back to the request for admissions, I --
6 we are really needing deadlines, counsel, for when you will
7 respond to certain things.

8 So just for example, these requests for admissions
9 were sent out in January. We just got responses. They are
10 literally ten requests, and they are on the scientific
11 issues and the scientific facts in the case. And they are
12 on issues that have not been admitted in the answer by the
13 federal defendants.

14 And I just want to give Your Honor one example.
15 We asked them to admit whether since 2008 top federal
16 government climate scientists recommended bringing
17 atmospheric carbon dioxide concentrations back to 350 parts
18 per million or less to avoid unusually serious risks of harm
19 to current and future generations and practically
20 irreversible climate change impacts like sea level rise and
21 species extinction.

22 We have gone back and further defined some of the
23 words that the federal defendants have had concern about.

24 That's a fact whether or not top federal
25 government climate scientists have recommended that. And

1 they have asserted executive privilege over this request.
2 They have made numerous objections to it. And I am hopeful
3 that by separating out their responses for EPA that they
4 might be able to provide a substantive response to some of
5 these issues that would really help us narrow the issues in
6 dispute in the case.

7 But what we are seeing is objections and delay and
8 no commitment as to when we can get answers to these factual
9 assertions.

10 MR. DUFFY: We have responded. We have objected.
11 We'll talk to the EPA and the Executive Office of the
12 President to see what difference there may be between the
13 two, if any.

14 And we will confer on this, and if plaintiffs are
15 unsatisfied with the responses we have provided, you know,
16 they can file a motion.

17 MS. OLSON: So counsel, I am just asking you to
18 separate out your responses for EPA and to tell us by when
19 you can do that.

20 MR. DUFFY: Well, we'll talk -- as we have
21 endeavored to do on Friday, we will talk with the relevant
22 folks at each of those agencies, and then we will confer
23 with you once we have more information.

24 I will be honest, in all candor, I have trouble
25 seeing, at least at this point in time, what that particular

1 errand is going to accomplish, but I don't want to prejudge
2 that. I want to see what those agencies have to say on that
3 issue.

4 THE COURT: All right. So we may have issues
5 going down the road with the executive privilege claim that
6 needs to be addressed by the court when -- if that comes up?

7 MS. OLSON: Perhaps, Your Honor, although we are
8 doing our best to avoid that.

9 THE COURT: Okay.

10 MS. OLSON: And we are focusing on the defendant
11 departments and agencies in our discovery at this point to
12 try to avoid having to address that issue and have further
13 delay in the case.

14 THE COURT: All right. Well, meet and confer. Do
15 you have time today to do that on some of these issues?

16 MS. OLSON: Yes. I had hoped we were going to
17 have time this afternoon to meet and confer and do it in the
18 court.

19 MR. DUFFY: Well, I assume by meet and confer that
20 means the parties meet and confer and not this --

21 THE COURT: Yes.

22 MR. DUFFY: Yeah, we are here and we are --

23 THE COURT: I can give you -- rather than do it in
24 court, I can give you a conference room.

25 MS. OLSON: That would be great, Your Honor.

1 Thank you.

2 THE COURT: You probably don't want a public meet
3 and confer session, so.

4 MR. DUFFY: I don't think it would be conducive
5 to --

6 THE COURT: Yeah. Okay.

7 I want to add one modification to this proposed
8 schedule. On December 4th, instead of trial begins, I am
9 going to direct both parties to submit trial memorandum to
10 the court.

11 And so in the trial memo, I would expect you to
12 inform the court what you view as the issues for trial, what
13 the evidence is going to be from your vantage point, and
14 just be as detailed as you can to give the court a heads-up
15 on what you view to be the issues at the trial of the case.

16 And then after the trial memos are filed, there
17 may be some further discussions with the court after that if
18 the court has questions.

19 So I would like the trial memos filed on
20 December -- December the 4th.

21 And I would view those as the roadmaps that I need
22 regarding the destination that you want the court to arrive
23 at at the end of this journey.

24 MR. DUFFY: Your Honor, can I make one additional
25 request with respect to the schedule?

1 THE COURT: Yes.

2 MR. DUFFY: We previously discussed having our
3 disclosure of our rebuttal experts occur on September 14th
4 for all of them.

5 THE COURT: Yes.

6 MR. DUFFY: And so I would propose that, likewise,
7 with the reports that those also be the October 13th date or
8 that we at least endeavor to get them in by that date.

9 THE COURT: Yes. That's a good point. Yes,
10 October 13th.

11 Okay.

12 MR. VOLPE: Your Honor, may I make what I hope is
13 a parting observation?

14 THE COURT: Yes.

15 MR. VOLPE: So one of the difficulties in this
16 case has been the way the plaintiffs have propounded
17 discovery, and we just heard an example of the -- kind of
18 the interchange between the court and the parties, with the
19 court saying let's focus on the science, let's focus on the
20 science.

21 The plaintiffs are propounding discovery, for
22 example, on the Wayne Tracker e-mails that has nothing to do
23 with the science, has nothing to do with the core
24 allegations in the case.

25 And one of the difficulties from the defendants'

1 perspective is responding to that discovery in a way that
2 moves this case along.

3 And so we keep running into the issue of the
4 plaintiffs saying, we are narrowing, Judge. We are
5 narrowing. But they are not really narrowing.

6 And maybe that just has to be resolved in motions
7 practice.

8 But it is -- you know, it is being used as a tool
9 by the plaintiffs to say we are being reasonable here but
10 they are not. They are not being reasonable. They cannot
11 seem to be able to focus on what's really at issue in the
12 case, which is the science, what's going on today rather
13 than what happened when President Johnson was the president
14 of the United States.

15 So I just offer that observation because that has
16 been one of our -- and we have said this to the court
17 before, that has been one of the most trying aspects of this
18 case is trying to get to the -- get to the -- you know, the
19 kernel of the case and move this case along because the same
20 discovery that the government is discussing here, we have
21 gotten the same -- the intervenors have gotten the same
22 discovery.

23 And, again, a lot of the stuff we have no -- we
24 have never said any -- the intervenors have never said
25 anything about these issues. We have no materials about

1 these issues, but yet we are confronted with discovery that
2 would require a monumental effort and just really doesn't
3 advance this case along, especially a case that the court
4 says it wants to try in the early part of 2018.

5 Anyway, thank you for that opportunity.

6 THE COURT: You are welcome, but you are getting
7 off the bus soon anyway.

8 MR. VOLPE: Yes. I just --

9 MS. OLSON: Your Honor, I can assure everyone that
10 we will have excellent expert reports, and our experts are
11 doing a fabulous job of trying to meet the court's deadline.

12 And I have one last issue which relates to the
13 deposition of our plaintiffs.

14 Counsel for the federal defendants has indicated
15 that they intend to depose all 21 of the youth, and I want
16 to raise the issue that the youth are now on summer
17 vacation, and doing depositions over the course of the
18 summer when they are more available and it doesn't conflict
19 with their school would be a really helpful thing.

20 And so if you do intend to take the plaintiffs'
21 depositions, we'd like to know when you intend to notice
22 those and move forward with that.

23 And related to that, we'll be discussing a
24 proposed protective order to protect the confidential
25 information that would be discovered during those

1 depositions.

2 THE COURT: Well, the summer vacation is starting
3 as we speak, isn't it? So, yeah, and you are here. So meet
4 and confer about that and see what you can arrange in terms
5 of a deposition schedule that is convenient for everybody.

6 MR. DUFFY: Your Honor, if I can just add one
7 comment that sort of ties these other comments up together.

8 We received, I believe, eight Rule 30(b)(6)
9 deposition notices, which I can't even guess how many people
10 we are going to have to prepare and produce for those
11 depositions. But it's got to be more than 20 in addition to
12 the two we have already had.

13 And now we also have the expert case, the getting
14 experts in order -- experts are busy people, of course -- to
15 respond to 13 expert reports.

16 And the point that Mr. Volpe makes, I think he
17 states it better than I could have. This discovery circus,
18 if you will, that we are dealing with is an enormous drain
19 on our resources.

20 And I am just going to put this proposal out
21 there: The parties might be well advised when we are
22 conferring to really try to narrow down the issues into some
23 sort of bullet-pointed list and then compare that to the
24 discovery requests.

25 And I would ask the plaintiffs to look at that and

1 say is there anything in these requests that goes to those
2 bullet-pointed issues and not stretch these bullet-pointed
3 issues, like with the Wayne Tracker example where we add
4 things that aren't actually in the complaint but really to
5 stick to the complaint because I can't imagine how we are
6 going to depose 21 -- 21 plaintiffs while at the same time
7 doing another 20 or 30, you know, depositions of federal
8 agency employees and the real -- as Your Honor has
9 identified, the real issue being these experts, and that's
10 the real heart of the case.

11 And I just want to put that out there because, you
12 know, we are going to come in here in a month and they are
13 going to say, oh, we are delaying because we still haven't
14 produced these responses or enough documents, although we
15 are working on that.

16 And I just don't want to see us here in the same
17 position month after month with the same, you know, notes.

18 THE COURT: Well, I -- let me again comment. And
19 I do have a question myself, and, you know, I will direct it
20 to Ms. Olson because it is somewhat perplexing to me.

21 When this case began, I -- and when the motions to
22 dismiss were filed and before they were ruled on and the
23 government had not answered -- filed its answer to the case
24 because it was moving to dismiss the complaint without the
25 necessity of filing an answer, and once those motions were

1 denied and the government filed its answer, and I recall,
2 Ms. Olson, that the government wanted additional time to
3 prepare an answer and the plaintiffs objected to granting
4 additional time. And I granted the government's -- the
5 requested extension and on the grounds that you didn't want
6 an answer that was just going to essentially say we don't
7 have sufficient information to admit or deny; therefore, we
8 deny.

9 And the government filed its answer with a number
10 of admissions contained therein that I have articulated
11 in -- since then in a written F and R and I have done it
12 orally here in open court.

13 And given the admissions of the government, and I
14 won't bother to rearticulate them, and in the aftermath of
15 those admissions, we have the government taking certain
16 actions regarding climate change, such as pulling out of the
17 Paris Agreement, opening up, you know, more coal extraction
18 policies, or having policies that expand the production of
19 coal and other fossil fuels.

20 This is my question as to what more does the
21 plaintiff need in terms of a trial other than what the
22 government knows now, what the government has admitted it
23 knows now, and what the government's actions are at present
24 and going forward?

25 So the -- as I said, the historical, you know,

1 recounting of what President Lyndon Johnson, you know, may
2 have known, I just don't see that as being of relevance to
3 the case. It may be a little bit, but still, it's what you
4 have now given what you are asking for in terms of
5 injunctive relief that's focused on future actions.

6 MS. OLSON: Um-hmm.

7 THE COURT: And so that -- that's the position
8 from where I sit.

9 And so you might basically discuss that among your
10 colleagues and see how much of this document production you
11 really need to go forward with the case, especially if you
12 want an expedited trial date.

13 MS. OLSON: Your Honor, I agree, and one thing I
14 just want to point out is that all of the requests for
15 production of documents and, in fact, a significant portion
16 of this discovery in the case was propounded prior to the
17 motions to withdraw by the intervenor defendants.

18 THE COURT: Okay.

19 MS. OLSON: And the intervenor defendants, as Your
20 Honor knows, refused to concede any of the facts of the
21 case, virtually, and were -- it was unclear what they were
22 going to dispute or not dispute.

23 So we were preparing for trial in part in light of
24 those positions, and I think our position can shift once
25 Your Honor makes a decision on them leaving the case.

1 THE COURT: All right. Okay. Anything else
2 today?

3 MR. GREGORY: Your Honor, this is Philip Gregory
4 for the plaintiffs.

5 One thing I wanted to talk about is how, and for
6 purposes of trial, expert reports and depositions will be
7 used. And I'd like to provide a specific example.

8 When we tried the Katrina cases before Judge Duval
9 down in New Orleans, Judge Duval had the expert report and
10 the expert deposition submitted to him before the expert
11 testified. And that then truncated or shortened the time
12 that the expert was on the witness stand.

13 In other words, so counsel were strongly
14 encouraged not to cover areas that were in the report or in
15 the deposition because the court had already read and
16 familiarized itself with that.

17 Will a similar practice or does the court see a
18 similar practice going on here so that by the time we get to
19 trial, the parties can in essence have shorter expert
20 presentations and that it would be the report and the
21 deposition that would provide the court with the initial
22 basis for the expert's testimony, if that makes sense, Your
23 Honor?

24 THE COURT: Yeah. That's a good question. Let me
25 explain. Since there are not full magistrate consents filed

1 in the case, Judge Aiken will be trying the case. And she
2 will have a pretrial conference, and she will address that
3 at the pretrial conference as well as other matters. So
4 that will be her call. Okay?

5 MR. VOLPE: Your Honor, sorry. Just one more
6 thing.

7 What Ms. Olson just said about our presence in the
8 case driving the discovery, that is a lot of misdirection.
9 Our presence in the case does not drive discovery. In fact,
10 when they are propounding discovery on the federal
11 defendants regarding -- you know, related to the Executive
12 Office of the President, what does that have to do with the
13 intervenors in the case? That's ridiculous.

14 THE COURT: Well, you know, I don't want to speak
15 on her behalf, but from my perspective, I will tell you
16 where I think she is coming from. At least it's what I was
17 thinking because I pressed the intervenors several times to
18 inform the court whether the intervenors were going to take
19 a position different from the government in terms of the
20 government's answer because the intervenors' position in
21 their answer was we don't have sufficient information to
22 address the complaint's allegations, and on that basis we
23 deny them.

24 So I was trying to figure out, were the
25 intervenors going to separately come in and contradict with

1 their evidence the -- some of the admissions that the
2 government made, and if that were going to be the case, we
3 needed to know that.

4 And I can see where the plaintiff needed to know
5 that so that they could prepare their case accordingly.

6 But since you are gracefully exiting the case now,
7 they don't need to worry about that anymore, and now all we
8 need to do is work with the government on these issues.

9 MR. VOLPE: All right. Well let's leave it at
10 that, then, Your Honor. Thank you.

11 THE COURT: You bet. Okay. Have a good day
12 everybody.

13 MS. OLSON: Thank you, Your Honor.

14 THE COURT: All right.

15 THE CLERK: This court's adjourned.

16 *(The proceedings were concluded this*
17 *14th day of June, 2017.)*

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1 I hereby certify that the foregoing is a true and
2 correct transcript of the oral proceedings had in the
3 above-entitled matter, to the best of my skill and ability,
4 dated this 14th day of June, 2017.

5
6 /s/Kristi L. Anderson

7 Kristi L. Anderson, Certified Realtime Reporter
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