

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS**

	)	
DOWNWIND, LLC and GOLDEN BRIDGE,	)	
LLC,	)	
	)	
Plaintiffs,	)	Case No. 3:16-cv-00207-DPM
	)	
v.	)	
	)	
UNITED STATES DEPARTMENT OF	)	
ENERGY; ERNEST MONIZ, in his official	)	
capacity as Secretary of the United States	)	
Department of Energy; SOUTHWESTERN	)	
POWER ADMINISTRATION; SCOTT	)	
CARPENTER, in his official capacity as	)	
Administrator of the Southwestern Power	)	
Administration	)	
	)	
Defendants.	)	
	)	

**DEFENDANTS’ ANSWER TO PLAINTIFFS’ FIRST AMENDED COMPLAINT**

Defendants, the United States Department of Energy (“DOE”), Ernest Moniz, the Southwestern Power Administration (“SWPA”) and Scott Carpenter, by and through their legal counsel, hereby submit their Answer to Plaintiffs’ First Amended Complaint (“Amended Complaint”), dated and filed December 5, 2016 (ECF No. 20). The numbered paragraphs of the Answer correspond to the numbered paragraphs of the Amended Complaint.

1. The allegations of Paragraph 1 are a characterization of Plaintiffs’ action to which no response is required.

2. Defendants admit that DOE issued a Record of Decision, Secretarial Determination, and Summary of Findings, and entered into a Participation Agreement related to the Plains & Eastern Clean Line Transmission Project (“Clean Line Project”). These documents

are the best evidence of their contents. To the extent the allegations in Paragraph 2 and footnote 1 are inconsistent with the referenced documents, they are denied.

3. Paragraph 3 contains Plaintiffs' characterizations of the Participation Agreement and DOE's Record of Decision, which are the best evidence of their contents. Defendants admit that the language quoted in the first sentence of Paragraph 3 found at DOE's Record of Decision in re Application of Clean Line Energy Partners LLC, 81 Fed. Reg. 18,602 (Mar. 31, 2016) is accurate. To the extent the allegations are inconsistent with the Participation Agreement or the Record of Decision, they are denied.

4. Paragraph 4 contains Plaintiffs' characterizations of DOE's Record of Decision, which is the best evidence of its contents. Defendants admit that the language quoted in the first sentence of Paragraph 4 found at 81 Fed. Reg. 18,603 is accurate. To the extent the allegations are inconsistent with the Record of Decision, they are denied. Defendants deny that the Project will have the impacts on Plaintiffs' property interests as alleged in the last sentence of Paragraph 4.

5. Defendants admit that the paragraph contains a direct quote from page six of the Record of Decision.

6. Paragraph 6 contains characterizations of Plaintiffs' claims, to which no response is required. To the extent a response is required, the allegations are denied.

7. The first sentence of Paragraph 7 is denied. The second sentence reflects Plaintiffs' legal conclusions which are denied and Defendants affirmatively deny that their actions are a "stunning example of federal overreach." The second sentence also contains characterizations of the Record of Decision and Participation Agreement. Those documents are the best evidence of their contents; to the extent the allegations are inconsistent with the

documents, they are denied. The third sentence speaks to the relief Plaintiffs seek from this Court. To the extent a response is required, Defendants deny that Plaintiffs are entitled to the requested relief or to any other judgment or relief in their favor.

**PARTIES**

8. Defendants lack sufficient information to admit or deny the allegations in Paragraph 8.

9. Defendants lack sufficient information to admit or deny the allegations in Paragraph 9.

10. Defendants lack sufficient information to admit or deny the allegations in Paragraph 10.

11. The allegations in Paragraph 11 are denied.

12. The first sentence of Paragraph 12 is admitted. As for the second sentence, Defendants admit that DOE requested proposals for projects under Section 1222 in its Request for Proposals of June 10, 2010; that DOE received a proposal for the Clean Line Project; and DOE reviewed that proposal, including development of an Environmental Impact Statement (“EIS”) as required under the National Environmental Policy Act (“NEPA”). Paragraph 12 also contains characterizations of DOE’s Summary of Findings, Record of Decision, and the Participation Agreement. Those documents are the best evidence of their content; to the extent the allegations are inconsistent with these documents, they are denied.

13. DOE admits that Secretary Moniz is the Secretary of the DOE and that his address is the one stated in Paragraph 13. The second sentence of Paragraph 13 is admitted. With respect to the scope of his authority, Paragraph 13 states a legal conclusion for which no admission or denial is necessary. To the extent a response is required, Defendants admit that the

DOE is administered under the supervision and direction of the Secretary pursuant to 42 U.S.C. § 7131.

14. The allegations in the first sentence of Paragraph 14 are admitted. The allegations in the second sentence of Paragraph 14 are admitted only to the extent the SWPA consulted as required under Section 1222 of the Energy Policy Act (“EPAAct”).

15. With respect to the scope of Administrator Carpenter’s authority, Paragraph 15 states a legal conclusion for which no admission or denial is necessary. To the extent a response is required, Administrator Carpenter possesses authority as provided in Section 1222 of the EPAAct and 42 U.S.C. § 7152(a)(2). The remaining allegations in Paragraph 15 are admitted.

16. Paragraph 16 is Plaintiffs’ characterization of Federal Defendants to which no response is required.

17. Paragraph 17 is Plaintiffs’ characterization of Intervenor-Defendant to which no response is required from Federal Defendants. To the extent Plaintiffs characterize Intervenor-Defendant as developing the Project, both Defendants and Intervenor-Defendant are participating in the Project.

#### **JURISDICTION AND VENUE**

18. The allegations of Paragraph 18 are legal conclusions and therefore no response is required.

19. The allegations of Paragraph 19 are legal conclusions and therefore no response is required.

20. The allegations of Paragraph 20 are legal conclusions and therefore no response is required.

21. The allegations of Paragraph 21 are legal conclusions and therefore no response is required.

**EXISTING FEDERAL AND STATE STATUTORY FRAMEWORK AND SITING AND APPROVING ELECTRIC TRANSMISSION LINE PROJECTS**

22. The allegations in Paragraph 22 are denied.

23. Paragraph 23 reflects Plaintiffs' characterization of Arkansas law, which is the best evidence of its contents. To the extent the allegations are inconsistent with the referenced statutes, they are denied.

24. Paragraph 24 reflects Plaintiffs' characterization of Arkansas law, which is the best evidence of its contents. To the extent the allegations are inconsistent with the referenced statute, they are denied.

25. Paragraph 25 reflects Plaintiffs' characterization of Arkansas law, which is the best evidence of its contents. To the extent the allegations are inconsistent with the referenced statute, they are denied.

26. Paragraph 26 reflects Plaintiffs' characterization of Arkansas law, which is the best evidence of its contents. To the extent the allegations are inconsistent with the referenced statute, they are denied.

27. Paragraph 27 reflects Plaintiffs' characterization of Arkansas law, which is the best evidence of its contents. To the extent the allegations are inconsistent with the referenced statute, they are denied.

28. Paragraph 28 reflects Plaintiffs' characterization of Arkansas law, which is the best evidence of its contents. To the extent the allegations are inconsistent with the referenced statute, they are denied.

29. Paragraph 29 reflects Plaintiffs' characterization of Arkansas law, which is the best evidence of its contents. To the extent the allegations are inconsistent with the referenced statute, they are denied.

30. Paragraph 30 reflects Plaintiffs' characterization of Arkansas law, which is the best evidence of its contents. To the extent the allegations are inconsistent with the referenced statute, they are denied.

31. Paragraph 31 reflects Plaintiffs' characterization of Arkansas law, which is the best evidence of its contents. To the extent the allegations are inconsistent with the referenced statute, they are denied.

32. Paragraph 32 reflects Plaintiffs' characterization of the EAct of 2005, which is the best evidence of its contents. To the extent the allegations are inconsistent with the EAct of 2005, they are denied.

33. Paragraph 33 reflects Plaintiffs' characterization of Section 1222 of the EAct of 2005, which is the best evidence of its contents. To the extent the allegations are inconsistent with that Section, they are denied.

34. Paragraph 34 reflects Plaintiffs' characterization of Section 1222 of the EAct of 2005 and the Federal Power Act, which are the best evidence of their contents. To the extent the allegations are inconsistent with Section 1222 or the Federal Power Act, they are denied.

35. Paragraph 35 reflects Plaintiffs' characterization of Section 1222 of the EAct of 2005, which is the best evidence of its contents. To the extent the allegations are inconsistent with that Section, they are denied.

36. Paragraph 36 reflects Plaintiffs' characterization of Section 1222 of the EAct of 2005, which is the best evidence of its contents. To the extent the allegations are inconsistent with that Section, they are denied.

37. Paragraph 37 reflects Plaintiffs' characterization of Section 1222 of the EAct of 2005, which is the best evidence of its contents. To the extent the allegations are inconsistent with that Section, they are denied. Defendants admit that the first sentence accurately quotes a portion of 42 U.S.C. § 16421(f).

38. Paragraph 38 reflects Plaintiffs' characterization of Section 1222 of the EAct of 2005, which is the best evidence of its contents. To the extent the allegations are inconsistent with that Section, they are denied. Defendants admit that the first sentence accurately quotes 42 U.S.C. § 16421(d)(2).

39. Paragraph 39 reflects Plaintiffs' characterization of Section 1222 of the EAct of 2005, which is the best evidence of its contents. To the extent the allegations are inconsistent with that Section, they are denied.

#### **PROCEDURAL BACKGROUND AND DEVELOPMENT OF CLEAN LINE'S PROJECT**

40. Paragraph 40 purports to quote a document attached to the Amended Complaint. That document is the best evidence of its contents. To the extent that the allegations are inconsistent with that document, they are denied.

41. Paragraph 41 offers Plaintiffs' interpretation of the document Plaintiffs refer to as "Clean Line's CCN Application," which is the best evidence of its contents. To the extent the allegations are inconsistent with that document, they are denied.

42. Paragraph 42 offers Plaintiffs' interpretation of the document Plaintiffs refer to as "Initial APSC Decision," which is the best evidence of its contents. To the extent the allegations are inconsistent with that document, they are denied.

43. Paragraph 43 offers Plaintiffs' interpretation of the document Plaintiffs refer to as "Initial APSC Decision," which is the best evidence of its contents. To the extent the allegations are inconsistent with that document, they are denied.

44. Paragraph 44 offers Plaintiffs' interpretation of the document Plaintiffs refer to as "Initial APSC Decision," which is the best evidence of its contents. To the extent the allegations are inconsistent with that document, they are denied.

45. Paragraph 45 offers Plaintiffs' interpretation of the document Plaintiffs refer to as "Initial APSC Decision," which is the best evidence of its contents. To the extent the allegations are inconsistent with that document, they are denied.

46. Paragraph 46 offers Plaintiffs' interpretation of documents filed as attachments to the Amended Complaint, which are the best evidence of their contents and speak for themselves. To the extent the allegations are inconsistent with those documents, they are denied. Upon information and belief, Defendants deny that Clean Line has violated the Arkansas Major Utility Act; Defendants lack information on which to admit or deny whether Clean Line has violated any other Arkansas law.

47. With respect to the first sentence of Paragraph 47, Defendants deny the allegations that Clean Line has represented to DOE that Clean Line will comply with Arkansas law as vague and overly broad. The second and third sentences quote the Participation Agreement, which is the best evidence of its own contents. Defendants admit that the second and third sentences of Paragraph 45 accurately quote the cited portions of the Participation



Agreement. Defendants have insufficient information to admit or deny the allegations in the fourth sentence.

48. Defendants admit that DOE published a Request for Proposals for New or Upgraded Transmission Line Projects Under Section 1222 of the EPAct of 2005 on June 10, 2010, requesting “Project Proposals from entities that are interested in providing contributed funds under Section 1222 of the Energy Policy Act of 2005 (EPAct) for Southwestern or Western’s participation in the upgrade of existing transmission facilities owned by either PMA, or the construction of new transmission lines in the states in which either PMA operates.”

49. Paragraph 49 characterizes the Request for Proposals published in the Federal Register. That document is the best evidence of its contents; to the extent the allegations are inconsistent with the document they are denied.

50. Defendants admit that Clean Line filed an application with DOE on or around July 6, 2010. The second sentence contains Plaintiffs’ characterization of that application. The document is the best evidence of its contents; to the extent the allegations are inconsistent with the document they are denied. Defendants admit that on April 28, 2015, DOE issued a request for public comment “on the first complete application submitted in response to its June 10, 2010 Request for Proposals for New or Upgraded Transmission Line Projects Under Section 1222 of the Energy Policy Act of 2005.” DOE’s Notices: Application for Proposed Project for Clean Line Plains & Eastern Transmission Line, 80 Fed. Reg. 23,520 (Apr. 28, 2015), but deny the last sentence of Paragraph 48 in all other respects.

51. Defendants admit that Clean Line filed an update to its Part I Application in August 2011. The first sentence of Paragraph 51 also contains Plaintiffs’ characterization of that document; the document is the best evidence of its contents, and to the extent the allegations are

inconsistent with that document they are denied. Defendants deny the last sentence in Paragraph 49.

52. Defendants admit that the parties executed an Advanced Funding and Development Agreement on September 20, 2012. Paragraph 52 also contains Plaintiffs' characterization of the Agreement; the Agreement is the best evidence of its contents and to the extent the allegations are inconsistent with the Agreement they are denied. Defendants admit that upon DOE's entering the Agreement, DOE had not made a final determination on whether the Project satisfied any of the criteria in Section 1222(b). Defendants admit that as of September 12, 2012, they had not provided for any public review, comment or objection to either the Part I Application or the Updated Part I Application.

53. The allegations in Paragraph 53 contain Plaintiffs' characterization of DOE's Notice of Intent to Draft an Environmental Impact Statement and of the Draft Environmental Impact Statement ("DEIS"), which are the best evidence of their contents. To the extent the allegations are inconsistent with these documents, they are denied. Defendants admit that in the Draft Environmental Impact Statement they did not identify a preferred alternative because DOE "had not identified a preference for whether to participate with Clean Line in some manner as prescribed by Section 1222." DEIS at 2-91.<sup>1</sup>

54. Defendants admit the first part of the sentence in Paragraph 54, before the word "and." DOE lacks sufficient information to admit or deny the allegations that follow the word "and."

55. DOE admits that on April 28, 2015, it published a request for public comment on Clean Line's proposal for DOE participation in the Project under Section 1222. The second and

---

<sup>1</sup> Found at: <http://energy.gov/nepa/downloads/eis-0486-draft-environmental-impact-statement> (follow link at EIS-0486: DEIS-Volume I (TOC-Sec. 3.13)).

third sentences of Paragraph 55 characterize DOE's April 28, 2015 Federal Register notice, which is the best evidence of its own contents. To the extent Plaintiffs' allegations are inconsistent with DOE's April 28, 2015, Federal Register notice, they are denied.

56. The allegations in Paragraph 56 are denied.

57. The allegations in the first sentence of Paragraph 57 are admitted. The second sentence contains Plaintiffs' characterization of the final Environmental Impact Statement ("FEIS"). That document is the best evidence of its contents; to the extent the allegations are inconsistent with the document they are denied.

58. The allegations in Paragraph 58 are admitted.

59. Paragraph 59 characterizes the Record of Decision, which is the best evidence of its own contents. To the extent Plaintiffs' allegations are inconsistent with the Record of Decision, they are denied. Defendants admit that the proposed corridor traverses the State of Arkansas. Defendants deny that the Project will have the impacts on Plaintiffs' property interests as alleged in the last sentence of Paragraph 59.

60. Paragraph 60 contains Plaintiffs' characterization of the Participation Agreement. That document is the best evidence of its contents; to the extent the allegations are inconsistent with that document they are denied.

61. Paragraph 61 contains Plaintiffs' characterization of the Participation Agreement. That document is the best evidence of its contents; to the extent the allegations are inconsistent with that document they are denied.

62. Paragraph 62 contains Plaintiffs' characterization of the Participation Agreement. That document is the best evidence of its contents; to the extent the allegations are inconsistent with that document they are denied.

63. The allegations in Paragraph 63 reflect Plaintiffs' characterization of the Participation Agreement, which speaks for itself and is the best evidence of its contents. To the extent the allegations are inconsistent with the Participation Agreement, they are denied.

64. The first and second sentences of Paragraph 64 offer Plaintiffs' characterization of the Participation Agreement, which is the best evidence of its own contents. To the extent the allegations are inconsistent with the Participation Agreement, they are denied. With respect to the third sentence of Paragraph 64, Defendants admit that Plaintiffs and Plaintiffs' members are not parties to the Participation Agreement, but deny the remainder of the sentence.

65. The allegations in Paragraph 65 reflect Plaintiffs' opinions, to which no response is required. To the extent a response is required, the allegations are denied.

66. The allegations in the first four sentences of Paragraph 66 reflect Plaintiffs' characterization of the Participation Agreement, which is the best evidence of its contents. To the extent the allegations are inconsistent with the Participation Agreement, they are denied. The final sentence of Paragraph 66 is denied.

67. The allegations in the first two sentences of Paragraph 67 reflect Plaintiffs' characterization of the Record of Decision, which is the best evidence of its contents. To the extent the allegations are inconsistent with the Record of Decision, they are denied. The third sentence of Paragraph 67 is denied. Defendants do not have sufficient information to admit or deny the fourth sentence.

68. The first, second, and fourth sentences of Paragraph 68 contain Plaintiffs' characterizations of the Participation Agreement, which is the best evidence of its own contents. To the extent Plaintiffs' allegations are inconsistent with the Participation Agreement, they are denied. The third sentence of Paragraph 68 is denied.

69. The allegations in Paragraph 69 are denied.

70. The allegations in Paragraph 70 are denied.

**FIRST CAUSE OF ACTION**

**Violation of the Administrative Procedure Act and Section 1222 of the EAct**

71. Defendants reassert and incorporate their responses to the allegations in Paragraphs 1 to 70.

72. The allegations in Paragraph 72 are denied.

73. Paragraph 73 contains Plaintiffs' legal interpretation of Section 1222 of the EAct of 2005, to which no response is required. To the extent the allegations are inconsistent with Section 1222, they are denied.

74. The first sentence contains Plaintiffs' legal conclusions of Arkansas law, to which no response is required. To the extent the allegations are inconsistent with Arkansas law, they are denied. The second sentence contains Plaintiffs' characterization of the Decision Documents. Those documents are the best evidence of their contents; to the extent the allegations are inconsistent with the documents they are denied.

75. The allegations in Paragraph 75 are denied.

76. The allegations in Paragraph 76 are denied.

**SECOND CAUSE OF ACTION**

**Applicability and Compliance with the Utility Facility Environmental and Economic Protection Act**

77. Defendants reassert and incorporate their responses to the allegations in Paragraphs 1 to 76.

78. Paragraph 78 contains Plaintiffs' legal conclusions of Arkansas law, to which no response is required. To the extent the allegations are inconsistent with Arkansas law, they are denied.

79. The allegations in Paragraph 79 reflect Plaintiffs' legal conclusions, to which no response is required. To the extent the allegations are inconsistent with Arkansas law, they are denied.

80. The allegations in Paragraph 80 reflect Plaintiffs' legal conclusions, to which no response is required. To the extent the allegations are inconsistent with Arkansas law, they are denied.

81. The allegations in Paragraph 81 reflect Plaintiffs' characterizations of the DOE Decision Documents, which are the best evidence of their contents. To the extent the allegations are inconsistent with the Decision Documents, they are denied. Defendants admit that neither DOE nor SWPA has received a CECPN from the Arkansas Public Service Commission ("APSC") for the facilities planned for the Project in Arkansas. Upon information and belief, Defendants admit that Clean Line has not received a CECPN from the APSC for those facilities. Defendants admit that Exhibit D contains the text quoted in the fourth sentence of Paragraph 81.

82. The allegations in the first sentence of Paragraph 82 reflect Plaintiffs' characterizations of the Participation Agreement, and the allegations in the second sentence of Paragraph 82 reflect Plaintiffs' characterizations of APSC Order No. 9. Both documents are the best evidence of their own contents. To the extent Plaintiffs' allegations are inconsistent with the Participation Agreement or APSC Order No. 9, they are denied.

83. The allegations in the first sentence of Paragraph 83 reflect Plaintiffs' characterization of Clean Line's filings with the Federal Energy Regulatory Commission, which are the best evidence of their contents. To the extent those allegations are inconsistent with these filings, they are denied. The allegations in the second sentence of Paragraph 83 reflect Plaintiffs'

legal conclusion, to which no response is required. To the extent a response is required, they are denied.

84. The allegations in Paragraph 84 reflect Plaintiffs' characterization of the Participation Agreement, which is the best evidence of its contents. To the extent the allegations are inconsistent with the Participation Agreement, they are denied.

85. Paragraph 85 reflects Plaintiffs' request for relief, to which no response is required. To the extent a response is required, the requested relief should be denied.

**THIRD CAUSE OF ACTION**

**Violation of the Administrative Procedure Act Section 1222 of the EAct**

86. Defendants reassert and incorporate their responses to the allegations in Paragraphs 1 to 85.

87. Defendants admit that the first sentence of Paragraph 87 contains an accurate quotation from Section 1222 of the EAct of 2005. The allegations in the second and third sentences of Paragraph 87 reflect Plaintiffs' characterization of the Participation Agreement, which is the best evidence of its contents. To the extent the allegations are inconsistent with the Participation Agreement, they are denied. The final sentence is denied.

88. The allegations in Paragraph 88 reflect Plaintiffs' characterization of Section 1222 of the EAct of 2005, which is the best evidence of its contents. To the extent the allegations are inconsistent with Section 1222, they are denied.

89. The allegations in Paragraph 89 reflect Plaintiffs' characterization of the Participation Agreement, which is the best evidence of its contents. To the extent the allegations are inconsistent with the Participation Agreement, they are denied.

90. The allegations in Paragraph 90 are denied.

**FOURTH CAUSE OF ACTION**  
**Violation of the Administrative Procedure Act**

91. Defendants reassert and incorporate their responses to the allegations in Paragraphs 1 to 90.

92. The allegations of Paragraph 92 are legal conclusions and therefore no response is required.

93. The allegations in Paragraph 93 are denied.

94. The allegations in the first sentence of Paragraph 94 reflect Plaintiffs' characterization of Section 1222 of the EAct of 2005, which is the best evidence of its contents. To the extent the allegations are inconsistent with Section 1222, they are denied. The second sentence of Paragraph 94 reflects a quote from Webster's Dictionary, which is the best evidence of its contents. The second sentence also reflects Plaintiffs' legal conclusion, to which no response is needed. To the extent a response is required, that conclusion is denied.

95. The allegations in the first and third sentences of Paragraph 95 reflect Plaintiffs' characterization of DOE's Summary of Findings, which is the best evidence of its contents. To the extent the allegations are inconsistent with the Summary of Findings, they are denied. The allegations in the second sentence of paragraph 95 are denied.

96. The allegations in Paragraph 96 reflect Plaintiffs' characterization of DOE's Summary of Findings, which is the best evidence of its contents. To the extent the allegations are inconsistent with the Summary of Findings, they are denied.

97. The allegations in Paragraph 97 are denied.

98. Paragraph 98 contains Plaintiffs' legal characterization of Section 1222 of the EAct of 2005. To the extent the allegations are inconsistent with Section 1222, they are denied.

99. The allegations in Paragraph 99 are denied.



100. Defendants admit that the Federal Power Act defines “Transmission Organization” as set forth in 16 U.S.C. § 796(29).

101. Paragraph 101 reflects Plaintiffs’ characterizations of the Summary of Findings, which is the best evidence of its contents. To the extent Plaintiffs’ allegations are inconsistent with the Summary of Findings, they are denied.

102. Defendants admit that the Southwest Power Pool (“SPP”) is a transmission organization operating in the central United States including the area where power may be generated for transmission over the Project. The remainder of the first sentence reflects Plaintiffs’ opinions, to which no response is required. The second sentence of Paragraph 102 quotes from the 2016 SPP Transmission Expansion Plan Report, which is the best evidence of its own contents. To the extent the allegations are inconsistent with the Report, they are denied. The third sentence of Paragraph 102 contains Plaintiffs’ opinions and legal conclusions, to which no response is required. To the extent a response is required to those allegations, they are denied. Defendants admit that the Midcontinent Independent System Operator is a transmission organization operating in the area where the Project’s proposed Arkansas converter station will be located. The MTEP 15 is the best evidence of its own contents. To the extent the allegations in the fourth sentence are inconsistent with MTEP 15, they are denied. Any remaining allegations in Paragraph 102 are denied.

103. The allegations in Paragraph 103 are denied.

104. Paragraph 104 contains Plaintiffs’ characterizations of the SPP Integrated Transmission Plan 20-Year Assessment Report, which is the best evidence of its own contents. To the extent Plaintiffs’ allegations are inconsistent with that Report, they are denied. Paragraph

104 also contains Plaintiffs' opinions and legal conclusions, to which no response is required.

To the extent a response is required to those allegations, they are denied.

105. The allegations in Paragraph 105 are denied.

106. The allegations in Paragraph 106 are denied.

107. Paragraph 107 contains Plaintiffs' legal interpretation of Section 1222 of the EAct of 2005, to which no response is necessary. To the extent a response is required, Paragraph 107 is denied.

108. Paragraph 108 contains Plaintiffs' characterization of two documents published in the Federal Register. Those documents are the best evidence of their contents; to the extent the allegations are inconsistent with the documents, they are denied.

109. The allegations in Paragraph 109 are denied.

110. The allegations in Paragraph 110 are denied.

111. The allegations in Paragraph 111 are denied.

**FIFTH CAUSE OF ACTION**

**Violation of the Administrative Procedure Act and the 5th Amendment Right to Due Process**

112. Defendants reassert and incorporate their responses to the allegations in Paragraphs 1 to 111.

113. The allegations of Paragraph 113 are legal conclusions and therefore no response is required.

114. The allegations of Paragraph 114 are legal conclusions and therefore no response is required.

115. The allegations in Paragraph 115 are denied.

116. Paragraph 116 contains Plaintiffs' characterization of the Record of Decision. That document is the best evidence of its contents; to the extent the allegations are inconsistent with that document, they are denied.

117. The allegations in Paragraph 117 are denied.

118. The allegations of Paragraph 118 are legal conclusions and therefore no response is required.

119. The allegations in Paragraph 119 reflect Plaintiffs' legal conclusions, to which no response is required. To the extent a response is required, the allegations are denied.

120. The allegations in Paragraph 120 reflect Plaintiffs' opinions and legal conclusions, to which no response is required. To the extent a response is required, the allegations are denied.

121. The allegations in Paragraph 121 reflect Plaintiffs' opinions and legal conclusions, to which no response is required. To the extent a response is required, the allegations are denied.

122. The allegations in Paragraph 122 are denied.

123. The allegations in the first sentence of Paragraph 123 are admitted. The remaining allegations in paragraph 123 reflect Plaintiffs' characterization of the Participation Agreement, which is the best evidence of its contents. To the extent the allegations are inconsistent with the Participation Agreement, they are denied.

124. Paragraph 124 reflects Plaintiffs' legal predictions and conclusions, to which no response is required. To the extent a response is required, the allegations are denied.

125. The allegations in Paragraph 125 reflect Plaintiffs' opinions and legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

126. The allegations in Paragraph 126 are denied.

**PRAYER FOR RELIEF**

The balance of the Amended Complaint provides Plaintiffs' prayer for relief to which no answer is required. To the extent a response is deemed required, Defendants deny that Plaintiffs are entitled to the requested relief or to any relief whatsoever.

**GENERAL DENIAL**

All of the allegations in Plaintiffs' Amended Complaint which have not been specifically admitted, denied, or otherwise answered are hereby denied.

**AFFIRMATIVE DEFENSES**

The United States asserts the following defenses. Nothing herein may be construed to suggest that the United States bears the burden of proof on any of the issues set forth below. These defenses are based upon the information currently available to the United States, and the United States reserves the right to assert additional defenses upon discovery of additional information.

**FIRST DEFENSE**

Plaintiffs have failed to exhaust their administrative remedies as to some or all of their claims.

**SECOND DEFENSE**

Plaintiffs fail to state a claim for which relief may be granted as to some or all of their claims for relief.

**THIRD DEFENSE**

Some or all of Plaintiffs' claims are not ripe, and therefore the Court lacks subject matter jurisdiction over those claims.

**FOURTH DEFENSE**

Plaintiffs have failed to allege mandatory duties owed them and therefore this Court lacks subject matter jurisdiction under 28 U.S.C. § 1361.

**FIFTH DEFENSE**

Defendants may have other and additional affirmative defenses about which they may be currently unaware and reserve the right to assert such affirmative defenses.

WHEREFORE, Defendants respectfully request that this Court dismiss Plaintiffs' Amended Complaint with prejudice, that judgment be entered for Defendants, and that they be allowed such further relief as the Court may allow.

Dated: December 19, 2016

Respectfully submitted,

JOHN C. CRUDEN  
Assistant Attorney General  
Environment and Natural Resources Division

*/s/Stephen Finn*  
JAMES J. DUBOIS  
U.S. Department of Justice Environmental and  
Natural Resources Division  
Natural Resources Section  
999 18th Street, South Terrace, Suite 370  
Denver, CO 80202  
Tel: (303) 844-1375  
james.dubois@usdoj.gov

STEPHEN FINN  
U.S. Department of Justice Environmental and  
Natural Resources Division  
Natural Resources Section  
601 D Street, NW,  
Washington, D.C. 20004  
202-305-3284  
[Stephen.finn@usdoj.gov](mailto:Stephen.finn@usdoj.gov)

READE E. WILSON  
U.S. Department of Justice Environmental and  
Natural Resources Division  
Land Acquisition Section  
601 D Street, NW  
Washington, D.C. 20004

202-305-0299  
[reade.wilson@usdoj.gov](mailto:reade.wilson@usdoj.gov)

*Counsel for Defendants*

OF COUNSEL:  
Bettina Mumme  
U.S. Department of Energy  
Office of the General Counsel  
1000 Independence Ave, SW  
Washington, DC 20585  
202-586-8713

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 19th day of December, 2016, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties in this matter who are registered with the Court's CM/ECF filing system.

/s/ Stephen Finn  
STEPHEN FINN