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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

THE LOS ALAMOS STUDY GROUP,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:11-CV-0946-JEC-WDS
)	
UNITED STATES DEPARTMENT OF)	
ENERGY, et al.)	
)	
Federal Defendants.)	
)	

**FEDERAL DEFENDANTS' "ANSWER" TO PLAINTIFF'S
OCTOBER 21, 2011 COMPLAINT [ECF NO. 1]**

Federal Defendants, through undersigned counsel, answer the allegations in Plaintiff's October 21, 2011 "Complaint for Declaratory Judgment and Injunctive Relief under the National Environmental Policy Act of 1969" (hereinafter "Complaint") [ECF No. 1] as follows:

Each of the claims raised in Plaintiff's Complaint is subject to judicial review, if at all, pursuant to the scope and standards for judicial review set forth in the Administrative Procedures Act ("APA"), 5 U.S.C. §§ 701-706. *See* Compl. ¶¶ 1, 81-130 (alleging violations under the National Environmental Policy Act ("NEPA") and the APA); *Utah Shared Access Alliance v. Carpenter*, 463 F.3d 1125, 1134 (10th Cir. 2006) ("Because none of the statutory or regulatory provisions in question [including NEPA] provide for a private cause of action, the judicial review provisions of the APA govern this suit."). Section 706 of the APA imposes a narrow and deferential standard of review of agency action or inaction, and the court's role is solely to determine whether the challenged actions or inactions meet this standard based on a review of the administrative record that the agency provides to the court. *Camp v. Pitts*, 411 U.S. 138, 142 (1973); *see Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971), *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977) (review of an action brought pursuant to the APA is "based on the full administrative record that was before the Secretary at the time he made his decision"); *Village of Los Ranchos de Albuquerque v. Marsh*, 956 F.2d 970, 972-73 (10th Cir. 1992) (en banc). The APA expressly directs that, in reviewing final agency action or agency inaction, "the court shall review the whole record or those parts of it cited by a party." 5 U.S.C. § 706.

Federal Defendants aver that pursuant to *Olenhouse v. Commodity Credit Corporation*, 42 F.3d 1560, 1579-80 (10th Cir. 1994), this matter is governed by reference to the Federal Rules

of Appellate Procedure, which do not contemplate the filing of a Complaint or an Answer. *See also id.*, at 1579 (“The District Court’s reliance on arguments, documents and other evidence outside the administrative record is due, at least in part, to the *illicit procedure* it employed to determine the issues for review. The District Court processed the Farmers’ appeal as a separate and independent action, *initiated by a complaint* and subjected to discovery and a “pretrial” motions practice....This process, at its core, is inconsistent with the standards for judicial review of agency action under the APA.”) (emphasis added). Nevertheless, in an effort to foster judicial economy, Federal Defendants submit this “Answer,” construing Plaintiff’s “Complaint” as a petition for review of agency action, without waiving any defense or position that Federal Defendants may have pursuant to *Olenhouse*.

“I. PRELIMINARY STATEMENT”

1. The allegations in Paragraph 1 constitute conclusions of law and characterizations of Plaintiff’s case, to which no response is required.
2. The allegations in Paragraph 2 constitute conclusions of law and characterizations of Plaintiff’s case, to which no response is required. To the extent a response is required, Federal Defendants deny the allegations.
3. Federal Defendants deny the allegations in the first sentence of Paragraph 3. Federal Defendants admit the allegation in the second sentence of Paragraph 3 that the Chemistry and Metallurgy Research Building Replacement Project (“CMRR Project”) consists of the CMRR-Nuclear Facility (“CMRR-NF”) and the CMRR Radiological Laboratory, Utility, and Office Building (“CMRR-RLUOB” or “RLUOB”), but deny the remaining allegations in the second sentence. The remaining allegations in Paragraph 3 purport to

characterize the CMRR Project, which was analyzed in the 2003 CMRR Environmental Impact Statement (“EIS”) and approved in the 2004 CMRR Record of Decision (“ROD”). The 2003 CMRR EIS and 2004 CMRR ROD speak for themselves and are the best evidence of their contents. The Court is referred to the 2003 CMRR EIS and 2004 CMRR ROD for true and complete statements of their provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.

4. The allegations in Paragraph 4 purport to characterize the 2003 CMRR EIS and the 2004 CMRR ROD, which speak for themselves and are the best evidence of their contents. The Court is referred to the 2003 CMRR EIS and the 2004 CMRR ROD for true and complete statements of their provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.
5. Federal Defendants deny the allegations in Paragraph 5 but aver that enhanced safety requirements and updated seismic information have caused Federal Defendant National Nuclear Security Administration (“NNSA”) to re-evaluate the design concept of the CMRR-NF.
6. Federal Defendants deny the allegations in Paragraph 6.
7. Federal Defendants deny the allegations in Paragraph 7 but aver that construction completion currently is planned for 2020 with operations planned to start in 2023.
8. Federal Defendants deny the allegations in the first, second, third, and fourth sentences of Paragraph 8. The allegations in the fifth sentence of Paragraph 8 purport to characterize

the 2010 Nuclear Posture Review, which speaks for itself and is the best evidence of its contents. The Court is referred to the 2010 Nuclear Posture Review for true and complete statements of its provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.

9. Federal Defendants deny the allegations in Paragraph 9 but aver that by March 15, 2012, the Administrator for Federal Defendant NNSA will submit to Congress a report on NNSA's approach to construction project management for the CMRR-NF and other projects at Department of Energy ("DOE") facilities. Federal Defendants further aver that the Senate Armed Services Committee directed the Government Accountability Office ("GAO") to review cost estimates and evaluate cost savings measures for the CMRR-NF and other projects at DOE facilities.
10. Federal Defendants deny the allegations in Paragraph 10.
11. The allegations in Paragraph 11 constitute conclusions of law to which no response is required. To the extent a response is required, Federal Defendants deny the allegations.
12. The allegations in the first sentence of Paragraph 12 constitute characterizations of Plaintiff's prior case challenging the CMRR-NF Project, to which no response is required. Federal Defendants admit the allegations in the second sentence of Paragraph 12. Federal Defendants deny the allegations in the third sentence of Paragraph 12 but aver that the DOE issued a final supplemental EIS ("SEIS") for the CMRR-NF Project on August 26, 2011, and that an amended ROD for the CMRR-NF Project was signed on October 12, 2011, and published in the Federal Register on October 18, 2011.

13. The allegations in the first, second, third, and fourth sentences of Paragraph 13 constitute conclusions of law to which no response is required and purport to characterize the 2003 CMRR EIS, the 2004 CMRR ROD, and the 2011 CMRR-NF SEIS, which speak for themselves and are the best evidence of their contents. The Court is referred to the 2003 CMRR EIS, the 2004 CMRR ROD, and the 2011 CMRR-NF SEIS for true and complete statements of their provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document. Federal Defendants deny the allegations in the fifth sentence of Paragraph 13.
14. The allegations in Paragraph 14 constitute conclusions of law to which no response is required. To the extent a response is required, Federal Defendants deny the allegations.
15. The allegations in Paragraph 15 constitute conclusions of law and characterizations of Plaintiff's case, to which no response is required. To the extent a response is required, Federal Defendants deny the allegations.
16. Federal Defendants deny the allegations in Paragraph 16 but aver that the RLUOB has been built at a cost of approximately \$364 million and that estimates for the total cost of the CMRR Project currently range from \$4.064 billion to \$6.164 billion. Federal Defendants aver that construction of the RLUOB has been completed and that operations are expected to begin in 2013. Federal Defendants aver that construction of the CMRR-NF currently is expected to commence no sooner than FY 2013. Federal Defendants further aver that the facility is expected to be complete in 2020 and operational in 2023.

17. The allegations in Paragraph 17 purport to characterize the Memorandum and Opinion Order in Plaintiff's prior case challenging the CMRR-NF Project, which speaks for itself and is the best evidence of its contents. The Court is referred to the Memorandum and Opinion Order for true and complete statements of its contents.
18. The allegations in Paragraph 18 constitute conclusions of law and characterizations of Plaintiff's case, to which no response is required. To the extent a response is required, Federal Defendants deny the allegations and deny any violation of NEPA or its implementing regulations.
19. The allegations in Paragraph 19 constitute conclusions of law and characterizations of Plaintiff's case, to which no response is required. To the extent a response is required, Federal Defendants deny the allegations.
20. The allegations in Paragraph 20 constitute Plaintiff's prayers for relief, to which no response is required. To the extent a response is required, Federal Defendants deny that Plaintiff is entitled to the relief requested or any other relief.

“II. JURISDICTION AND VENUE”

21. The allegations in Paragraph 21 constitute conclusions of law, to which no response is required.

“III. PARTIES”

22. Federal Defendants lack knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 22, and on this basis deny the allegations.
23. Federal Defendants lack knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 23, and on this basis deny the allegations.

24. Federal Defendants admit the allegations in the first sentence of Paragraph 24. The remaining allegations constitute conclusions of law, to which no response is required.
25. Federal Defendants admit the allegations in Paragraph 25.
26. Federal Defendants admit the allegation in Paragraph 26 that NNSA is an agency within DOE. The remaining allegations constitute conclusions of law, to which no response is required.
27. Federal Defendants admit the allegations in Paragraph 27.

“IV. FACTUAL BACKGROUND”

“A. Origins of the CMRR Project”

28. Federal Defendants admit the allegations in Paragraph 28.
29. Federal Defendants admit the allegations in the first and second sentences in Paragraph 29. The remaining allegations in Paragraph 29 purport to characterize the 2003 CMRR EIS which speaks for itself and is the best evidence of its contents. The Court is referred to the 2003 CMRR EIS for true and complete statements of its provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.
30. Federal Defendants admit the allegations in the first sentence of Paragraph 30. The remaining allegations in Paragraph 30 purport to characterize the 2004 CMRR ROD which speaks for itself and is the best evidence of its contents. The Court is referred to the 2004 CMRR ROD for true and complete statements of its provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.

31. The allegations in Paragraph 31 purport to characterize an unidentified statement by DOE/NNSA, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.
32. The allegations in the first sentence of Paragraph 32 purport to characterize an unidentified statement by Defendants, which speaks for itself and is the best evidence of its contents. The remaining allegations in Paragraph 32 purport to characterize the 2003 CMRR EIS which speaks for itself and is the best evidence of its contents. The Court is referred to the 2003 CMRR EIS for true and complete statements of its provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.

“B. Extension of the Schedule for the CMRR-NF”

33. Federal Defendants deny the allegations in the first sentence in Paragraph 33. The allegations in the second, third, and fourth sentences of Paragraph 33 purport to characterize the 2008 Los Alamos National Laboratory (“LANL”) Site-Wide EIS (“SWEIS”) and 2008 Complex Transformation Supplemental Programmatic EIS (“CTSPEIS”), which speak for themselves and are the best evidence of their contents. The Court is referred to the 2004 SWEIS and 2008 CTSPEIS for true and complete statements of their provisions. The allegations in fifth sentence of Paragraph 33 purport to characterize an unidentified statement by Defendants, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any characterization of an

Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.

“C. Changes in Design Requirements”

34. Federal Defendants deny the allegations in the first, second, and third sentences of Paragraph 34. The allegations in the fourth sentence of Paragraph 34 purport to characterize an unidentified statement by the Defense Nuclear Facilities Safety Board, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.

“D. Seismic Issues; Defendants’ Response”

35. The allegations in the first and second sentences of Paragraph 35 purport to characterize a 2007 Probabilistic Seismic Hazard Assessment (“2007 PSHA”) for LANL which speaks for itself and is the best evidence of its contents. The Court is referred to the 2007 PSHA for true and complete statements of its provisions. The remaining allegations in Paragraph 35 purport to characterize NNSA’s analysis of the CMRR-NF Project after May 2007, which is discussed in the 2011 CMRR-NF SEIS. The 2011 CMRR-NF SEIS speaks for itself and is the best evidence of its contents. The Court is referred to the 2011 CMRR-NF SEIS for true and complete statements of its provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.

“E. The 2003 CMRR EIS Misstated the Scale of Construction Required”

36. The allegations in Paragraph 36 purport to characterize the 2003 CMRR EIS and 2005 Performance Baseline for CMRR-RLUOB, which speak for themselves and are the best evidence of their contents. The Court is referred to the 2003 CMRR EIS and 2005 Performance Baseline for CMRR-RLUOB for true and complete statements of their provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.

“F. Purpose and Need”

37. Federal Defendants deny the allegations in the first, second, and third sentences of Paragraph 37. The allegations in the fourth sentence of Paragraph 37 purport to characterize an unidentified statement by NNSA, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.

38. The allegations in the first sentence of Paragraph 38 purport to characterize a report to Congress by the JASON defense advisory group (Pit Lifetime, JSR-06-335), which speaks for itself and is the best evidence of its contents. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document. Federal Defendants deny the allegations in the second sentence of Paragraph 38.

39. The allegations in the first and second sentences of Paragraph 39 purport to characterize unidentified actions or documents concerning the Reliable Replacement Warhead (“RRW”) program, which speak for themselves and are the best evidence of their contents. Federal Defendants deny the allegations in the third sentence of Paragraph 39. The fourth sentence of Paragraph 39 purports to characterize a May 2009 Congressional Budget Request, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.
40. The allegations in the first sentence of Paragraph 40 purport to characterize a report by the JASON defense advisory group (Lifetime Extension Program, JSR-09-334), which speaks for itself and is the best evidence of its contents. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document. Federal Defendants deny the allegations in the second sentence of Paragraph 40.
41. The allegations in Paragraph 41 purport to characterize a Nuclear Posture Review Report, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.

“G. The Configuration of the 2010-11 CMRR-NF”

42. Federal Defendants deny the allegations in the first and second sentences of Paragraph 42. The allegations in the third sentence of Paragraph 42 constitute conclusions of law, to which no response is required. To the extent a response is required, Federal

Defendants deny the allegations. The allegations in the fourth sentence of Paragraph 42, including subparts (a) – (u), purport to characterize the 2003 CMRR EIS, 2004 CMRR ROD, 2011 CMRR-NF SEIS, and unidentified statements, which speak for themselves and are the best evidence of their contents. The Court is referred to the 2003 CMRR EIS, 2004 CMRR ROD, and 2011 CMRR-NF SEIS for true and complete statements of their provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.

43. Federal Defendants deny the allegations in Paragraph 43.

44. The allegations in Paragraph 44 purport to characterize the 2003 CMRR EIS, 2004 CMRR ROD, and 2011 CMRR-NF SEIS, which speak for themselves and are the best evidence of their contents. The Court is referred to the 2003 CMRR EIS, 2004 CMRR ROD, and 2011 CMRR-NF SEIS for true and complete statements of their provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.

45. The allegations in the first, third, and fourth sentences of Paragraph 45 purport to characterize the 2003 CMRR EIS, 2004 CMRR ROD, 2011 CMRR-NF SEIS, and unidentified statements, which speak for themselves and are the best evidence of their contents. The Court is referred to the 2003 CMRR EIS, 2004 CMRR ROD, and 2011 CMRR-NF SEIS for true and complete statements of their provisions. Federal Defendants deny any characterization of an Administrative Record document or other

document that is inconsistent with the plain language and meaning of that document.

Federal Defendants deny the allegations in the second sentence of Paragraph 45 but aver that the CMRR-NF is now expected to cost \$3.5 to \$5.8 billion to build.

46. Federal Defendants lack knowledge or information sufficient to form a belief about the truth or falsity of the allegations in Paragraph 46, and on this basis deny the allegations.

“K [sic]. Administration Commitment to CMRR-NF”

47. The allegations in Paragraph 47 purport to characterize a September 15, 2010 letter from the Vice President of the United States to the Senate Foreign Relations Committee, which speaks for itself and is the best evidence of its contents. The Court is referred to the September 15, 2010 letter for true and complete statements of its provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.

48. The allegations in Paragraph 48 purport to characterize a November 17, 2010 White House Fact Sheet, which speaks for itself and is the best evidence of its contents. The Court is referred to the November 17, 2010 White House Fact Sheet for true and complete statements of its provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.

49. The allegations in Paragraph 49 purport to characterize unidentified statements by NNSA management, NNSA Deputy Administrator Donald Cook, and Defendant D’Agostino, which speak for themselves and are the best evidence of their contents. Federal

Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.

“M [sic]. Predetermination of the Outcome of NEPA Reviews”

50. Federal Defendants deny the allegations in Paragraph 50.
51. Federal Defendants deny the allegations in Paragraph 51.
52. Federal Defendants deny the allegations in the first and second sentences of Paragraph 52. The third sentence in Paragraph 52 is a prayer for relief, to which no response is required. To the extent a response is required, Federal Defendants deny that Plaintiff is entitled to the relief requested in Paragraph 52 or any other relief whatsoever.

“N. Unlawful Interim Action; Construction and Equipping of the CMRR-RLUOB”

53. Federal Defendants admit the allegations in the first sentence of Paragraph 53. The allegations in the second and third sentences of Paragraph 53 constitute conclusions of law, to which no response is required. To the extent a response is required, Federal Defendants deny the allegations.
54. The allegations in Paragraph 54, including subparts (a) – (i), purport to characterize the 2003 CMRR EIS, 2004 CMRR ROD, 2011 CMRR-NF SEIS, and unidentified statements, which speak for themselves and are the best evidence of their contents. The Court is referred to the 2003 CMRR EIS, 2004 CMRR ROD, and 2011 CMRR-NF SEIS for true and complete statements of their provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.

55. Federal Defendants admit the allegations in the first, third, fourth, fifth, and ninth sentences of Paragraph 55. Federal Defendants deny the allegations in the second sentence of Paragraph 55 but aver that the 2007 PSHA was published in May 2007. Federal Defendants lack sufficient knowledge or information about the appropriations process for FY 2013 and on this basis deny the allegations in the sixth sentence of Paragraph 55. Federal Defendants deny the allegations in the seventh and eighth sentences of Paragraph 55 but aver that the approximately \$364 million was appropriated for the construction and commissioning of RLUOB and associated equipment.
56. Federal Defendants deny the allegations in Paragraph 56.
57. The allegations in Paragraph 57 purport to characterize the 2011 CMRR-NF SEIS, which speaks for itself and is the best evidence of its contents. The Court is referred to the 2011 CMRR-NF SEIS for true and complete statements of its provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.
58. Federal Defendants deny the allegations in Paragraph 58.
59. Federal Defendants deny the allegations in Paragraph 59 but aver that at the time the RLUOB was constructed, the adjacent area proposed for the CMRR-NF was also excavated in support of geologic characterization and seismic mapping. Federal Defendants aver that a parking lot has been built and that temporary buildings have been placed near the CMRR-NF site. Federal Defendants further aver that as part of the construction of RLUOB, a short portion of a tunnel that will connect the RLUOB and CMRR-NF has been constructed.

“O. DOE/NNSA Contractual Commitments”

60. Federal Defendants deny the allegations in the first and second sentences of Paragraph 60 but aver that Los Alamos National Security, LLC (“LANS”) is a contractor to DOE and is responsible for managing the CMRR Project. The allegations in the third sentence of Paragraph 60 purport to characterize a NNSA contract with LANS, which speaks for itself and is the best evidence of its contents. The Court is referred to the NNSA contract with LANS for true and complete statements of its provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document. Federal Defendants aver that a Performance Evaluation Plan, by which LANS’ performance is evaluated, is negotiated on an annual basis.

61. Federal Defendants deny the allegations in the first sentence of Paragraph 61. The allegations in the second sentence of Paragraph 61 purport to characterize a NNSA contract with LANS, which speaks for itself and is the best evidence of its contents. The Court is referred to the NNSA contract with LANS for true and complete statements of its provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.

“P. Final design of MCRR-NF”

62. The allegations in Paragraph 62 purport to characterize NNSA presentations and a statement by Steve Fong, which speak for themselves and are the best evidence of their contents. The Court is referred to the NNSA presentations and Fong statement for true

and complete statements of their provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.

63. Federal Defendants admit the allegations in Paragraph 63.
64. The allegations in Paragraph 64 constitute conclusions of law to which no response is required. To the extent a response is required, Federal Defendants deny the allegations.
65. The allegations in Paragraph 65 constitute conclusions of law to which no response is required. To the extent a response is required, Federal Defendants deny the allegations.
66. The allegations in the first sentence of Paragraph 66 purport to characterize DOE guidance. The DOE guidance speaks for itself and is the best evidence of its contents. The Court is referred to the DOE guidance for true and complete statements of its provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document. Federal Defendants deny the allegations in the second sentence of Paragraph 66.

“Q. DOE/NNSA continuing commitment to CMRR-NF”

67. Federal Defendants deny the allegations in the first sentence of Paragraph 67. The allegations in the second and third sentences of Paragraph 67, including subparts (a) – (g), purport to characterize the April 15, 2011 FY 2012 Stockpile Stewardship and Management Plan (“SSMP”), which speaks for itself and is the best evidence of its contents. The Court is referred to the FY 2012 SSMP for true and complete statements of its provisions. Federal Defendants deny any characterization of an Administrative

Record document or other document that is inconsistent with the plain language and meaning of that document.

“R. 2011 CMRR-NF SEIS”

68. Federal Defendants admit the allegation in the first sentence of Paragraph 68. The allegations in the second sentence of Paragraph 68 purport to characterize the 2011 CMRR-NF SEIS, which speaks for itself and is the best evidence of its contents. The Court is referred to the 2011 CMRR-NF SEIS for true and complete statements of its provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.

69. The allegations in the first and second sentence of Paragraph 69 purport to characterize the 2011 CMRR-NF SEIS, which speaks for itself and is the best evidence of its contents. The Court is referred to the 2011 CMRR-NF SEIS for true and complete statements of its provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document. Federal Defendants deny the allegations in the third sentence of Paragraph 69.

70. The allegations in the first sentence of Paragraph 70 purport to characterize the 2011 CMRR-NF SEIS, which speaks for itself and is the best evidence of its contents. The Court is referred to the 2011 CMRR-NF SEIS for true and complete statements of its provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of

that document. Federal Defendants deny the allegations in the second sentence of Paragraph 70.

71. The allegations in Paragraph 71 purport to characterize the 2011 CMRR-NF SEIS, which speaks for itself and is the best evidence of its contents. The Court is referred to the 2011 CMRR-NF SEIS for true and complete statements of its provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.
72. The allegations in Paragraph 72 constitute conclusions of law to which no response is required. To the extent a response is required, Federal Defendants deny the allegations.
73. The allegations in Paragraph 73 purport to characterize the 2011 amended ROD, which speaks for itself and is the best evidence of its contents. The Court is referred to the 2011 amended ROD for true and complete statements of its provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document. Federal Defendants aver that the 2011 amended ROD was published in the Federal Register on October 18, 2011.
74. Federal Defendants deny the allegations in the first and second sentences of Paragraph 74. Subparts (a) – (e) of Paragraph 74 contain conclusions of law to which no response is required and purport to characterize the 2011 CMRR-NF SEIS. The Court is referred to the 2011 CMRR-NF SEIS for true and complete statements of its provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.

75. The first sentence of Paragraph 75 constitutes conclusions of law to which no response is required. To the extent a response is required, Federal Defendants deny the allegations. Federal Defendants deny the allegations in the second sentence of Paragraph 75.
76. The allegations in the first and third sentences of Paragraph 76 purport to characterize the 2011 amended ROD and unidentified regulations. The 2011 amended ROD and unidentified regulations speak for themselves and are the best evidence of their contents. The Court is referred to the 2011 amended ROD for true and complete statements of its provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document. The allegations in the second sentence of Paragraph 76 constitute conclusions of law to which no response is required. To the extent a response is required, Federal Defendants deny the allegations

“S. Connected Actions”

77. The allegations in Paragraph 77 constitute conclusions of law, to which no response is required. To the extent a response is required, Federal Defendants deny the allegations.
78. The allegations in Paragraph 78 contain conclusions of law to which no response is required and purport to characterize unidentified statements by Federal Defendants, which speak for themselves are the best evidence of their contents. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.
79. The allegations in Paragraph 79 constitute conclusions of law, to which no response is required. To the extent a response is required, Federal Defendants deny the allegations.

80. The allegations in the first, second, and third sentences of Paragraph 80 purport to characterize unidentified statements by Defendants, which speak for themselves and are the best evidence of their contents. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document. The allegations in the fourth sentence of Paragraph 80 constitute conclusions of law to which no response is required. To the extent a response is required, Federal Defendants deny the allegations.

“CLAIMS FOR RELIEF”

“CLAIM I”

“[Alleged] Failure to Analyze Alternatives in an EIS”

81. Federal Defendants incorporate by reference their responses to all preceding Paragraphs.
82. The allegations in Paragraph 82 constitute conclusions of law, to which no response is required and purport to characterize the 2004 CMRR ROD, which speaks for itself and is the best evidence of its contents. The Court is referred to the 2004 CMRR ROD for true and complete statements of its provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.
83. The allegations in Paragraph 83 constitute conclusions of law, to which no response is required and purport to characterize NEPA and its implementing regulations, the 2011 amended ROD, and an unidentified prior internal decision, which speak for themselves and are the best evidence of their contents. The Court is referred to NEPA and its implementing regulations, the 2011 amended ROD, and the unidentified prior internal

decision for true and complete statements of their provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.

84. The allegations in Paragraph 84 constitute conclusions of law, to which no response is required and purport to characterize the 2003 CMRR EIS, which speaks for itself and is the best evidence of its contents. The Court is referred to the 2003 CMRR EIS for true and complete statements of its provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.
85. The allegations in Paragraph 85 constitute conclusions of law, to which no response is required. To the extent a response is required, Federal Defendants deny the allegations.
86. The allegations in the first sentence of Paragraph 86 constitute conclusions of law, to which no response is required. To the extent a response is required, Federal Defendants deny the allegations. The allegations in the second and third sentences of Paragraph 86 purport to characterize DOE guidance documents, which speak for themselves and are the best evidence of their contents. The Court is referred to the DOE guidance documents for true and complete statements of their provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.
87. The allegations in Paragraph 87 constitute conclusions of law, to which no response is required. To the extent a response is required, Federal Defendants deny the allegations.

88. Federal Defendants deny the allegations in the first sentence of Paragraph 88. The allegations in the second sentence of Paragraph 88 constitute conclusions of law, to which no response is required. To the extent a response is required, Federal Defendants deny the allegations.
89. The allegations in Paragraph 89 constitute conclusions of law, to which no response is required.
90. The allegations in Paragraph 90 constitute conclusions of law, to which no response is required.
91. The allegations in Paragraph 91 constitute conclusions of law, to which no response is required and purport to characterize the 2003 CMRR EIS and 2011 CMRR-NF SEIS, which speak for themselves and are the best evidence of their contents. The Court is referred to the 2003 CMRR EIS and 2011 CMRR-NF SEIS for true and complete statements of their provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document. To the extent a response is required, Federal Defendants deny the allegations and deny any violation of NEPA or its implementing regulations.

“CLAIM II”

“[Alleged] Failure to Include Information about ‘Purpose and Need’”

92. Federal Defendants incorporate by reference their responses to all preceding Paragraphs.
93. The allegations in the first and fifth sentences of Paragraph 93 constitute conclusions of law, to which no response is required. The allegations in the second sentence of

Paragraph 93 purport to characterize the 2003 CMRR SEIS and 2011 CMRR-NF SEIS, which speak for themselves and are the best evidence of their contents. The Court is referred to the 2003 CMRR EIS and 2011 CMRR-NF SEIS for true and complete statements of their provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document. Federal Defendants deny the allegations in the third and fourth sentences of Paragraph 93. To the extent a response is required, Federal Defendants deny the allegations and deny any violation of NEPA or its implementing regulations.

“CLAIM III”

“[Alleged] Failure to Include ‘No Action Alternative’”

94. Federal Defendants incorporate by reference their responses to all preceding Paragraphs.
95. The allegations in Paragraph 95 constitute conclusions of law, to which no response is required and purport to characterize NEPA and its implementing regulations, the 2011 amended ROD, and an unidentified prior internal decision, which speak for themselves and are the best evidence of their contents. The Court is referred to NEPA and its implementing regulations, the 2011 amended ROD, and the unidentified prior internal decision for true and complete statements of their provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.
96. The allegations in Paragraph 96 constitute conclusions of law, to which no response is required.

97. The allegations in Paragraph 97 constitute conclusions of law, to which no response is required and purports to characterize the 2011 CMRR-NF SEIS, which speaks for itself and is the best evidence of its contents. The Court is referred to the 2011 CMRR-NF SEIS for true and complete statements of its provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document. To the extent a response is required, Federal Defendants deny the allegations and deny any violation of NEPA or its implementing regulations.

“CLAIM IV”

“[Alleged] Predetermination of Outcome of NEPA Analyses”

98. Federal Defendants incorporate by reference their responses to all preceding Paragraphs.

99. Federal Defendants deny the allegations in the first and third sentences of Paragraph 99. The allegations in the second sentence of Paragraph 99 constitute conclusions of law, to which no response is required. To the extent a response is required, Federal Defendants deny the allegations.

100. Federal Defendants deny the allegations in Paragraph 100.

101. Federal Defendants deny the allegations in Paragraph 101.

102. The allegations in Paragraph 102 constitute conclusions of law, to which no response is required. To the extent a response is required, Federal Defendants deny the allegations and deny any violation of NEPA or its implementing regulations.

“CLAIM V”

“[Alleged] Failure to Issue a Record of Decision”

103. Federal Defendants incorporate by reference their responses to all preceding Paragraphs.
104. Federal Defendants deny the allegations in the first sentence of Paragraph 104. The remaining allegations in Paragraph 104 constitute conclusions of law, to which no response is required. To the extent a response is required, Federal Defendants deny the allegations and deny any violation of NEPA or its implementing regulations.

“CLAIM VI”

“[Alleged] Failure to Select from Among Alternatives Analyzed in EIS”

105. Federal Defendants incorporate by reference their responses to all preceding Paragraphs.
106. Federal Defendants deny the allegations in the first sentence of Paragraph 106. The remaining allegations in Paragraph 106 constitute conclusions of law, to which no response is required.
107. The allegations in the first sentence of Paragraph 107 constitute conclusions of law, to which no response is required. Federal Defendants deny the allegations in the second sentence of Paragraph 107.
108. The allegations in the first sentence of Paragraph 108 purport to characterize the 2003 CMRR EIS, which speaks for itself and is the best evidence of its contents. The Court is referred to the 2003 CMRR EIS for true and complete statements of its provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document. The allegations in the second and third sentences of Paragraph 108 constitute

conclusions of law, to which no response is required. To the extent a response is required, Federal Defendants deny the allegations and deny any violation of NEPA or its implementing regulations.

“CLAIM VII”

“[Alleged] Failure to Integrate NEPA Analyses with Decisionmaking”

109. Federal Defendants incorporate by reference their responses to all preceding Paragraphs.
110. The allegations in Paragraph 110 constitute conclusions of law, to which no response is required.
111. The allegations in Paragraph 111 constitute conclusions of law, to which no response is required.
112. Federal Defendants deny the allegations in the first sentence of Paragraph 112. The remaining allegations in Paragraph 112 constitute conclusions of law, to which no response is required. To the extent a response is required, Federal Defendants deny the allegations and deny any violation of NEPA or its implementing regulations.

“CLAIM VIII”

“[Alleged] Interim Actions Prejudicial to NEPA Process”

113. Federal Defendants incorporate by reference their responses to all preceding Paragraphs.
114. The allegations in Paragraph 114 constitute conclusions of law, to which no response is required.
115. The allegations in Paragraph 115 constitute conclusions of law, to which no response is required, and purport to characterize DOE NEPA guidance, which speaks for itself and is

the best evidence of its contents. The Court is referred to DOE NEPA guidance for true and complete statements of its content.

116. Federal Defendants deny the allegations in Paragraph 116, including subparts (a) – (g).

117. The allegations in Paragraph 117 constitute conclusions of law, to which no response is required. To the extent a response is required, Federal Defendants deny the allegations and deny any violation of NEPA or its implementing regulations.

“CLAIM IX”

“[Alleged] Denial of Review and Comment Opportunities”

118. Federal Defendants incorporate by reference their responses to all preceding Paragraphs.

119. The allegations in Paragraph 119 constitute conclusions of law, to which no response is required.

120. The allegations in Paragraph 120 constitute conclusions of law, to which no response is required.

121. Federal Defendants deny the allegations in the first and second sentences of Paragraph 121. The allegations in the third and fourth sentences of Paragraph 121 constitute conclusions of law, to which no response is required. To the extent a response is required, Federal Defendants deny the allegations and deny any violation of NEPA or its implementing regulations.

“CLAIM X”

“[Alleged] Failure to Discuss Impacts of Connected Actions”

122. Federal Defendants incorporate by reference their responses to all preceding Paragraphs.

123. The allegations in Paragraph 123 constitute conclusions of law, to which no response is required.
124. The allegations in Paragraph 124 constitute conclusions of law, to which no response is required. To the extent a response is required, Federal Defendants deny the allegations and deny any violation of NEPA or its implementing regulations.

“CLAIM XI”

“The 2011 CMRR-NF SEIS [Allegedly] Relies upon an Analysis and a Decision that Has Been Rejected”

125. Federal Defendants incorporate by reference their responses to all preceding Paragraphs.
126. The allegations in Paragraph 126 purport to characterize the 2003 CMRR EIS, the 2004 CMRR ROD, the 2008 CTSPEIS, and the 2011 CMRR-NF SEIS, which speak for themselves and are the best evidence of their contents. The Court is referred to the 2003 CMRR EIS, the 2004 CMRR ROD, the 2008 CTSPEIS, and the 2011 CMRR-NF SEIS for true and complete statements of their provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.
127. The allegations in Paragraph 127 purport to characterize the 2011 CMRR-NF SEIS, which speaks for itself and is the best evidence of its contents. The Court is referred to the 2011 CMRR-NF SEIS for true and complete statements of its provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.

128. The allegations in Paragraph 128 constitute conclusions of law and purport to characterize the 2003 CMRR EIS, which speaks for itself and is the best evidence of its contents. The Court is referred to the 2003 CMRR EIS for true and complete statements of its provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document.
129. Federal Defendants deny the allegations in Paragraph 129.
130. The allegations in Paragraph 130 constitute conclusions of law to which no response is required and purport to characterize the 2003 CMRR EIS, the 2008 CTSPEIS ROD, and 2011 CMRR-NF SEIS, which speak for themselves and are the best evidence of their contents. The Court is referred to NEPA and its implementing regulations, the 2003 CMRR EIS, the 2008 CTSPEIS ROD, and 2011 CMRR-NF SEIS for true and complete statements of their provisions. Federal Defendants deny any characterization of an Administrative Record document or other document that is inconsistent with the plain language and meaning of that document. To the extent a response is required, Federal Defendants deny the allegations and deny any violation of NEPA or its implementing regulations.

“PRAYER FOR RELIEF”

The remaining allegations set forth in the Complaint consist of Plaintiff’s prayers for relief, to which no response is required. To the extent a response is required, Federal Defendants deny that Plaintiff is entitled to the relief requested or any other relief.

GENERAL DENIAL

Federal Defendants deny any and all allegations in Plaintiff's Complaint, whether express or implied, that are not specifically admitted, denied, or qualified herein.

AFFIRMATIVE DEFENSES

In addition, Federal Defendants raise the following affirmative defenses:

1. Plaintiff has failed to establish this Court's jurisdiction for some or all of its claims.
2. Plaintiff has failed to identify an applicable waiver of sovereign immunity for some or all of its claims.
3. Some or all of Plaintiff's causes of action fail to state a claim upon which relief can be granted.
4. Some or all of Plaintiff's claims are barred by laches, estoppel, waiver, failure to exhaust administrative remedies, and the statute of limitations.

WHEREFORE, Federal Defendants request that this Court dismiss Plaintiff's Complaint, enter judgment for Federal Defendants, and award Federal Defendants court costs and any such further relief that this Court deems just and appropriate.

Respectfully submitted on this 9th day of January, 2012.

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Environment and Natural Resources Division

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CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2012, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing, which transmitted a Notice of Electronic Filing to the following CM/ECF registrants:

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