

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

CENTER FOR BIOLOGICAL DIVERSITY,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:15-cv-00477-EGS
)	Honorable Emmett G. Sullivan
DANIEL M. ASHE, Director, U.S. Fish)	
and Wildlife Service,)	
S.M.R. JEWELL, Secretary of the Interior,)	
U.S. FISH AND WILDLIFE SERVICE,)	
)	
Defendants,)	
)	
HEDSTROM LUMBER COMPANY, INC.,)	
BELL LUMBER & POLE CO., AND)	
JOHNSON TIMBER CORPORATION,)	
)	
Defendant-Intervenors.)	

DEFENDANT-INTERVENOR APPLICANTS' PROPOSED ANSWER

Defendant-Intervenor Applicants American Forest & Paper Association; Black Hills Forest Resource Association; Forest Landowners Association, Inc.; Forest Resources Association, Inc.; Great Lakes Timber Professionals Association; Hardwood Federation; National Alliance of Forest Owners; New Hampshire Timberland Owners Association, and Southeastern Lumber Manufacturer's Association, Inc. answer plaintiff's Complaint as follows:

INTRODUCTION

1. The first sentence of Paragraph 1 is plaintiff's characterization of its suit to which no response is required. Defendant-Intervenors lack information and knowledge sufficient to form a belief as to the truth of the allegations in sentences 2 and 3. Defendant-Intervenors admit

sentences 4 and 5 except for the final clause of each about which they lack information and knowledge sufficient to form a belief as to the truth of the allegations.

2. Defendant-Intervenors admit that the U.S. Fish & Wildlife Service (“FWS”) proposed to list the Northern Long-Eared Bat as a threatened species under the Endangered Species Act (“ESA”) in January 2015 and also proposed exemptions pursuant to Section 4(d) of the ESA but otherwise deny the allegations of sentences 1 and 2. Defendant-Intervenors admit sentence 3 in that the FWS adopted a final rule to list the Northern Long-Eared Bat as threatened and also adopted an interim final 4(d) Rule. Sentence 4 contains plaintiff’s characterizations of regulations, the interim final 4(d) Rule and a press release, all of which are the best evidence of their content and speak for themselves.

3. Paragraph 3 consists of conclusions or law to which no response is required. To the extent a response is required, Defendant-Intervenors deny paragraph 3.

JURISDICTION AND VENUE

4. Paragraph 4 constitutes a conclusion of law to which no response is required.

5. Paragraph 5 constitutes a conclusion of law to which no response is required.

6. Paragraph 6 constitutes a conclusion of law to which no response is required.

Defendant-Intervenors note venue that is also proper in other district courts.

PARTIES

7. Defendant-Intervenors lack information and knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 7 and therefore deny same.

8. Defendant-Intervenors lack information and knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 8 and therefore deny same.

9. Paragraph 9 is plaintiff's characterization of its suit to which no response is required.

10. Defendant-Intervenors lack information and knowledge sufficient to form a belief as to the truth of the allegations of sentence 1 of in Paragraph 10 and therefore deny same. Defendant-Intervenors admit the second sentence. Defendant-Intervenors lack information and knowledge sufficient to form a belief as to the truth of the remaining allegations of this paragraph.

11. Defendant-Intervenors lack information and knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 11 and therefore deny same.

12. Paragraph 12 constitutes conclusions of law and characterizations of plaintiff's case to which no response is required. To the extent a response is required, Defendant-Intervenors deny paragraph 12.

13. Paragraph 13 constitutes conclusions of law and characterizations of plaintiff's case to which no response is required.

14. Paragraph 14 constitutes conclusions of law and characterizations of plaintiff's case to which no response is required.

15. Paragraph 15 constitutes conclusions of law to which no response is required.

16. Defendant-Intervenors admit that Daniel M. Ashe is the Director of FWS. The remainder of Paragraph 16 constitutes conclusions of law to which no response is required.

17. Defendant-Intervenors admit the allegations of sentence 1 and deny sentence 2 as it constitutes conclusions of law to which no response is required.

18. Defendant-Intervenors admit the allegations of sentence 1 of Paragraph 18 and state that sentence 2 constitutes conclusions of law to which no response is required.

STATUTORY AND REGULATORY BACKGROUND

A. The National Environmental Policy Act

19. Paragraph 19 contains plaintiff's characterizations of a federal statute and federal regulation, respectively, which speak for themselves and are the best evidence of their contents. Therefore, no response is required.

20. Paragraph 20 putatively quotes and contains plaintiff's characterizations of a federal regulation and court opinions, which speak for themselves and are the best evidence of their contents. Therefore, no response is required.

21. Paragraph 21 contains plaintiff's characterizations of a federal statute and federal regulations, which speak for themselves and are the best evidence of their contents. Therefore, no response is required.

22. Paragraph 22 putatively quotes and contains plaintiff's characterization of a federal regulation, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

23. Paragraph 23 contains plaintiff's characterization of a federal regulation, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

24. Paragraph 24 contains plaintiff's characterization of federal regulations, which speak for themselves and are the best evidence of their contents. Therefore, no response is required.

25. Paragraph 25 contains plaintiff's characterization of a federal regulation, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

26. Paragraph 26 contains plaintiff's characterization of a federal regulation, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

27. Paragraph 27 putatively quotes and contains plaintiff's characterization of a federal regulation, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

28. Paragraph 28 putatively quotes and contains plaintiff's characterization of a federal regulation, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

29. Paragraph 29 contains plaintiff's characterization of a federal regulation, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

30. Paragraph 30 putatively quotes and contains plaintiff's characterization of federal regulations, which speak for themselves and are the best evidence of their contents. Therefore, no response is required.

31. Paragraph 31 contains plaintiff's characterization of a federal regulation, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

32. Paragraph 32 contains plaintiff's characterization of federal regulations, which speak for themselves and are the best evidence of their contents. Therefore, no response is required.

33. Defendant-Intervenors deny the allegation of the first sentence of Paragraph 33 as it is plaintiff's characterizations of Congressional action, but admit that there are statutory exemptions from NEPA. The allegation in the second sentence of Paragraph 33 putatively quotes and contains plaintiff's characterization of a federal statute, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

34. Paragraph 34 contains plaintiff's characterization of a federal statute and federal regulation, which speak for themselves and are the best evidence of their contents. Therefore, no response is required.

B. The ESA and Section 4(d)

35. Paragraph 35 putatively quotes and contains plaintiff's characterization of a court opinion, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

36. Paragraph 36 putatively quotes and contains plaintiff's characterization of a federal statute, which speak for itself and is the best evidence of its contents. Therefore, no response is required.

37. Paragraph 37 putatively quotes and contains plaintiff's characterization of a federal statute, which speaks for itself and is the best evidence of its contents. Therefore, no response is required.

38. Paragraph 38 contains plaintiff's characterization of a federal statute, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

39. Paragraph 39 contains plaintiff's characterization of a federal statute, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

40. Paragraph 40 putatively quotes and contains plaintiff's characterization of a federal statute and federal regulation, which speak for themselves and are the best evidence of their contents. Therefore, no response is required.

41. Paragraph 41 contains plaintiff's characterization of a federal statute, which speaks for itself and is the best evidence of its contents. Therefore, no response is required.

42. Paragraph 42 contains plaintiff's characterization of a federal statute, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

43. Paragraph 43 contains plaintiff's characterization of a federal statute, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

44. Paragraph 44 contains plaintiff's characterization of federal statutes, which speak for themselves and are the best evidence of their contents. Therefore, no response is required.

45. Paragraph 45 putatively quotes and contains plaintiff's characterization of a federal statute, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

46. Paragraph 46 putatively quotes and contains plaintiff's characterization of a federal statute, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

47. Paragraph 47 contains plaintiff's characterization of a federal regulation and 40 Fed. Reg. 44,412 (Sept. 27, 1975), respectively, which speak for themselves and are the best evidence of their contents. Therefore, no response is required.

48. Paragraph 48 putatively quotes and contains plaintiff's characterization of a federal statute, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

49. Paragraph 49 putatively quotes and contains plaintiff's characterization of a federal statute, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

FACTUAL ALLEGATIONS

A. The Northern Long-Eared Bat

50. Defendant-Intervenors lack information and knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 50 and therefore deny same.

51. Defendant-Intervenors lack information and knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 51 and therefore deny same.

52. Defendant-Intervenors lack information and knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 52 and therefore deny same.

53. Defendant-Intervenors lack information and knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 53 and therefore deny same.

54. Defendant-Intervenors lack information and knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 54 and therefore deny same.

55. Defendant-Intervenors lack information and knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 55 and therefore deny same.

56. Defendant-Intervenors lack information and knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 56 and therefore deny same.

57. Defendant-Intervenors lack information and knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 57 and therefore deny same.

58. Defendant-Intervenors lack information and knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 58 and therefore deny same.

59. Defendant-Intervenors lack information and knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 59 and therefore deny same.

60. Defendant-Intervenors lack information and knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 60 and therefore deny same.

61. Defendant-Intervenors lack information and knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 61 and therefore deny same.

62. Defendant-Intervenors lack information and knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 62 and therefore deny same.

63. Defendant-Intervenors lack information and knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 63 and therefore deny same.

64. Defendant-Intervenors lack information and knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 64 and therefore deny same.

65. Defendant-Intervenors lack information and knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 65 and therefore deny same.

66. Defendant-Intervenors lack information and knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 66 and therefore deny same.

67. Defendant-Intervenors lack information and knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 67 and therefore deny same.

68. Defendant-Intervenors lack information and knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 68 and therefore deny same.

69. Defendant-Intervenors lack information and knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 69 and therefore deny same.

70. Defendant-Intervenors lack information and knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 70 and therefore deny same.

71. Defendant-Intervenors lack information and knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 71 and therefore deny same.

72. Defendant-Intervenors lack information and knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 72 and therefore deny same.

B. Protecting The Northern Long-Eared Bat Under The ESA

73. Defendant-Intervenors admit that plaintiff petitioned the Service under the ESA regarding the bat and deny the remainder of the allegations in this paragraph.

74. Paragraph 74 contains plaintiff's characterization of a settlement agreement, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

75. Defendant-Intervenors admit the allegations in Paragraph 75.

76. Defendant-Intervenors admit that interested parties provided comments to the Service about the proposed listing and otherwise deny the allegations of this paragraph.

77. Defendant-Intervenors admit that the Service issued a non-binding interim guidance document on January 6, 2014.

78. Paragraph 78 contains plaintiff's characterization of a non-binding interim guidance document, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

79. Paragraph 79 and all its sub-parts contain plaintiff's characterization of a non-binding interim guidance document, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

80. Defendant-Intervenors admit the allegations in paragraph 80.

81. Defendant-Intervenors admit the allegations in paragraph 81.

82. Defendant-Intervenors admit the allegations in Paragraph 82.

83. Paragraph 83 contains plaintiff's characterization of the interim final 4(d) Rule, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

84. Paragraph 84 contains plaintiff's characterization of the interim final 4(d) Rule, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

85. Paragraph 85 contains plaintiff's characterization of the interim final 4(d) Rule, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

86. Paragraph 86 contains plaintiff's characterization of the interim final 4(d) Rule, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

87. Paragraph 87 contains plaintiff's characterization of the interim final 4(d) Rule, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

88. Paragraph 88 and all of its sub-parts contain plaintiff's characterization of the interim final 4(d) Rule, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

89. Paragraph 89 contains plaintiff's characterization of the interim final 4(d) Rule, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

90. Paragraph 90 contains plaintiff's characterization of the interim final 4(d) Rule, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

91. Defendant-Intervenors admit the allegations of paragraph 91.

92. Defendant-Intervenors admit the allegation of paragraph 92 and answering further contend that NEPA does not require the action identified by plaintiff.

93. Defendant-Intervenors admit the allegation of paragraph 93 and answering further contend that NEPA does not require the action identified by plaintiff.

94. Defendant-Intervenors admit the allegation of paragraph 94 and answering further contend that NEPA does not require the action identified by plaintiff.

95. Paragraph 95 contains plaintiff's characterization of the interim final 4(d) Rule, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

96. Paragraph 96 contains plaintiff's characterization of the interim final 4(d) Rule, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

97. Paragraph 97 contains plaintiff's characterization of the interim final 4(d) Rule, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

98. Defendant-Intervenors lack information and knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 98 and therefore deny same.

C. The Listing Decision And The Interim 4(d) Rule

99. Defendant-Intervenors admit the allegations in Paragraph 99.

100. Defendant-Intervenors admit the allegations in Paragraph 100.

101. Paragraph 101 putatively quotes and contains plaintiff's characterization of the rule adopting interim final 4(d), a federal statute, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

102. Defendant-Intervenors deny the allegations in Paragraph 102.

103. Paragraph 103 contains plaintiff's characterization of the rule adopting interim final 4(d) Rule and the proposed 4(d) Rule, which speak for themselves and are the best evidence of their content. Therefore, no response is required.

104. Paragraph 104 is plaintiff's speculation as to what "may" occur. Defendant-Intervenors lack information and knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 104 and therefore deny same.

CLAIM FOR RELIEF

Failure to Undertake a NEPA Review for the Interim 4(d) Rule (Violations of NEPA, 42 U.S.C. §§ 4321-4347, the CEQ's Implementing Regulations, 40 C.F.R. §§ 1500.1-1508.28, and the APA, 5 U.S.C. § 706)

105. Defendant-Intervenors incorporate by reference all of its foregoing responses to the allegations of plaintiff's complaint.

106. Paragraph 106 contains plaintiff's characterization of a regulation, which speaks for itself and is the best evidence of its content. Therefore, no response is required.

107. Paragraph 107 constitutes a conclusion of law to which no response is required. To the extent a response is required, Defendant-Intervenors deny the allegations.

108. Paragraph 108 constitutes a conclusion of law to which no response is required. To the extent a response is required, Defendant-Intervenors deny the allegations.

109. Paragraph 109 constitutes a conclusion of law to which no response is required. To the extent a response is required, Defendant-Intervenors deny the allegations.

110. Paragraph 110 constitutes a conclusion of law to which no response is required. To the extent a response is required, Defendant-Intervenors deny the allegations.

111. Paragraph 111 constitutes a conclusion of law to which no response is required. To the extent a response is required, Defendant-Intervenors deny the allegations.

112. Paragraph 112 constitutes a conclusion of law to which no response is required. To the extent a response is required, Defendant-Intervenors deny the allegations.

113. Paragraph 113 constitutes a conclusion of law to which no response is required. To the extent a response is required, Defendant-Intervenors deny same.

114. Paragraph 114 constitutes a conclusion of law to which no response is required. To the extent a response is required, Defendant-Intervenors deny the allegations.

PRAAYER FOR RELIEF

Defendant-Intervenors deny that plaintiff is entitled to declaratory relief, injunctive relief, or attorneys' fees and costs. Defendant-Intervenors deny that plaintiff is entitled to any other relief.

GENERAL DENIAL

Defendant-Intervenors deny all allegations in the Complaint, not specifically admitted, denied, or qualified herein.

DEFENSES

1. This Court lacks subject matter jurisdiction over some or all of plaintiff's claims.
2. This Complaint fails, in whole or in part, to state a claim for which relief can be granted.
3. Defendant-Intervenors reserve the right to assert additional affirmative defenses during the course of litigation.

Defendant-Intervenors respectfully request this Court to enter judgment in favor of defendants and defendant-intervenors, dismiss the Complaint, deny plaintiff's claim for fees and costs, and grant such other relief as the Court may deem just and proper.

Respectfully submitted this 19th day of October, 2015.

s/Richard W. Goeken

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CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2015, I caused the foregoing to be electronically filed with the Court using the CM/ECF system, which caused the parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

s/Richard W. Goeken

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