

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

In re DOWNSTREAM ADDICKS AND)
BARKER (TEXAS) FLOOD-CONTROL)
RESERVOIRS)
)
) Sub-Master Docket No. 17-9002L
) Chief Judge Susan Braden
_____)
)
THIS DOCUMENT APPLIES TO:)
)
ALL DOWNSTREAM CASES)
)
_____)

ANSWER TO THE
CONSOLIDATED AND AMENDED DOWNSTREAM MASTER COMPLAINT

Pursuant to Rules 7(a), 8(b), and 12 of the Rules of the United States Court of Federal Claims (“RCFC”), the defendant United States of America answers the allegations contained in the numbered paragraphs of Plaintiffs’ Consolidated and Amended Downstream Master Complaint, (ECF No. 23) (“Complaint”), as follows:

1. The United States avers that the U.S. Army Corps of Engineers (“Corps”) operated the Addicks and Barker Dams, and, as a component of its operation, water was released when it intentionally opened the floodgates shortly after midnight on August 28, 2017. The United States denies the remaining allegations contained in the first sentence of paragraph 1 of the Complaint. The allegations in the second and third sentences of paragraph 1 are Plaintiffs’ characterization of their claims and conclusions of law, to which no response is required; to the extent they may be deemed allegations of fact, they are denied.

2. The allegations in paragraph 2 of the Complaint are Plaintiffs’ characterization of their claims and conclusions of law, to which no response is required; to the extent they may be deemed allegations of fact, they are denied.

3. The allegations in paragraph 3 of the Complaint are Plaintiffs' characterization of their claims and conclusions of law, to which no response is required; to the extent they may be deemed allegations of fact, they are denied.

4. The allegations in paragraph 4 of the Complaint are Plaintiffs' characterization of their claims and conclusions of law, to which no response is required; to the extent they may be deemed allegations of fact, they are denied. The United States specifically denies that its actions violated the Fifth Amendment to the United States Constitution.

PARTIES

5. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Complaint and on that basis denies those allegations.

6. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Complaint and on that basis denies those allegations.

7. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Complaint and on that basis denies those allegations.

8. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Complaint and on that basis denies those allegations.

9. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint and on that basis denies those allegations.

10. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint and on that basis denies those allegations.

11. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint and on that basis denies those allegations.

12. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint and on that basis denies those allegations.

13. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint and on that basis denies those allegations.

14. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint and on that basis denies those allegations.

15. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of the Complaint and on that basis denies those allegations.

16. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the Complaint and on that basis denies those allegations.

17. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Complaint and on that basis denies those allegations.

18. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the Complaint and on that basis denies those allegations.

19. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the Complaint and on that basis denies those allegations.

20. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the Complaint and on that basis denies those allegations.

21. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Complaint and on that basis denies those allegations.

22. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Complaint and on that basis denies those allegations.

23. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the Complaint and on that basis denies those allegations.

24. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the Complaint and on that basis denies those allegations.

25. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the Complaint and on that basis denies those allegations.

26. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 of the Complaint and on that basis denies those allegations.

27. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 of the Complaint and on that basis denies those allegations.

28. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 of the Complaint and on that basis denies those allegations.

29. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the Complaint and on that basis denies those allegations.

30. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30 of the Complaint and on that basis denies those allegations.

31. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 of the Complaint and on that basis denies those allegations.

32. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32 of the Complaint and on that basis denies those allegations.

33. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 33 of the Complaint and on that basis denies those allegations.

34. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 34 of the Complaint and on that basis denies those allegations.

35. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 35 of the Complaint and on that basis denies those allegations.

36. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 36 of the Complaint and on that basis denies those allegations.

37. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37 of the Complaint and on that basis denies those allegations.

38. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of the Complaint and on that basis denies those allegations.

39. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 39 of the Complaint and on that basis denies those allegations.

40. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40 of the Complaint and on that basis denies those allegations.

41. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41 of the Complaint and on that basis denies those allegations.

42. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42 of the Complaint and on that basis denies those allegations.

43. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 43 of the Complaint and on that basis denies those allegations.

44. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44 of the Complaint and on that basis denies those allegations.

45. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 45 of the Complaint and on that basis denies those allegations.

46. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 46 of the Complaint and on that basis denies those allegations.

47. The United States admits that the Defendant is the United States of America. The lead counsel in this case is identified below, together with her mailing address, where service of pleadings can be made.

JURISDICTION

48. The allegations in paragraph 48 of the Complaint are Plaintiffs' characterization of their claims and conclusions of law to which no response is required; to the extent they may be deemed allegations of fact, they are denied.

FACTUAL ALLEGATIONS

49. In response to paragraph 49 of the Complaint, the United States admits that Buffalo Bayou is the largest waterway that runs through the City of Houston, Texas. The United States lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 49 and on that basis denies those allegations.

50. In response to paragraph 50 of the Complaint, the United States admits that the property addresses listed in paragraphs 6-46 of the Complaint are located generally downstream of the Addicks and Barker Reservoirs. The United States lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 50 and on that basis denies those allegations.

51. The allegations in paragraph 51 of the Complaint are Plaintiffs' characterization of their claims and conclusions of law, to which no response is required; to the extent they may be deemed allegations of fact, they are denied.

52. The concluding phrase of the first sentence of paragraph 52 of the Complaint is too vague and insufficiently specific to allow for a response and on that basis the United States denies those allegations. The United States admits the remaining factual allegations contained in paragraph 52.

53. The United States admits the factual allegations contained in paragraph 53 of the Complaint.

54. The United States admits the factual allegations contained in paragraph 54 of the Complaint.

55. The United States admits the factual allegations contained in paragraph 55 of the Complaint, with the clarification that the heights listed are elevations above the North American Vertical Datum of 1988, Adjustment of 2001, and not the height of the structures from their base.

56. The United States admits the factual allegations contained in the first sentence of paragraph 56 of the Complaint. The allegations in the second sentence of paragraph 56 contain Plaintiffs' characterization of an unspecified 2009 Corps document. The United States avers

that Corps documents are the best evidence of their content. Based on Plaintiffs' failure to identify the source of the allegations contained in the second sentence of paragraph 56 the United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 56 and on that basis denies those allegations. The allegations in the third sentence of paragraph 56 are either too vague and insufficiently specific to allow for a response or are Plaintiffs' characterization of their claims and conclusions of law, to which no response is required; to the extent that any may be deemed allegations of fact, they are denied.

57. The United States avers that the Corps has responsibility for operation of the gated water control structures on the Addicks and Barker Dams and some of the adjacent land. The remaining allegations contained in paragraph 57 of the Complaint are too vague and insufficiently specific to allow for a response and on that basis the United States denies those allegations.

58. The allegations contained in paragraph 58 of the Complaint are too vague and insufficiently specific to allow for a response and on that basis the United States denies those allegations.

59. The United States admits the factual allegations contained in the first sentence of paragraph 59 of the Complaint. The United States avers that at approximately 9:00 p.m. Central Time on August 25, 2017, the Corps operated the Addicks and Barker Dams by closing their floodgates. The United States denies the remaining allegations contained in the second sentence of paragraph 59.

60. The United States admits that approximately 50 inches of rain fell on parts of the Houston area between August 25 and August 29.

61. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first three sentences of paragraph 61 of the Complaint and on that basis denies those allegations. The United States denies the allegations contained in the fourth sentence of paragraph 61.

62. The United States avers that on August 29, 2017, water flowed around the north end of the Addicks Reservoir. The remaining allegations contained in paragraph 62 of the Complaint are too vague and insufficiently specific to allow for a response and on that basis the United States denies those allegations.

63. The United States admits that the Corps issued a press release at approximately 12:30 p.m. on August 27, 2017. The United States avers that the press releases referenced in paragraph 63 are the best evidence of their content. The remaining allegations in paragraph 63 are Plaintiffs' characterization of those press releases, to which no response is required; to the extent they may be deemed allegations of fact, the United States lacks knowledge or information sufficient to form a belief as to the allegations and on that basis denies those allegations.

64. The United States admits that the Corps issued a press release on August 27, 2017. The United States avers that the posting on Twitter on August 27, 2017, and a press release dated August 28, 2017, referenced in paragraph 64 of the Complaint are the best evidence of their content. The remaining allegations in paragraph 64 are Plaintiffs' characterization of the referenced documents, to which no response is required; to the extent they may be deemed allegations of fact, the United States lacks knowledge or information sufficient to form a belief as to the allegations and on that basis denies those allegations.

65. The allegations in paragraph 65 of the Complaint are Plaintiffs' characterization of an August 28, 2017 press release. The United States avers that the document is the best evidence of its content. The remaining allegations in paragraph 65 represent Plaintiffs' characterization of the press release, to which no response is required; to the extent they may be deemed allegations of fact, the United States lacks knowledge or information sufficient to form a belief as to the allegations and on that basis denies those allegations.

66. The United States avers that after the Corps operated the Addicks and Barker Dams by opening their floodgates on August 28, 2017, the subsequent releases affected the quantity of water flowing in parts of Buffalo Bayou. The United States lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 66 of the Complaint and on that basis denies those allegations.

67. The United States avers that on September 2, 2017, Houston Mayor Sylvester Turner issued a mandatory evacuation of flooded homes in a very limited section of west Houston. The United States lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 67 of the Complaint and on that basis denies those allegations

68. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 68 of the Complaint and on that basis denies those allegations.

69. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 69 of the Complaint and on that basis denies those allegations.

70. The United States avers that the Corps monitored the release of water from the Addicks and Barker Dams beginning on August 28, 2017. The remaining allegations contained in the first sentence of paragraph 70 of the Complaint are Plaintiffs' characterization of their claims and conclusions of law, to which no response is required; to the extent they may be deemed allegations of fact, they are denied. The second sentence of paragraph 70 contain Plaintiffs' characterization of a Twitter post. The United States avers that the document is the best evidence of its content. The remaining allegations in the second sentence of paragraph 70 represent Plaintiffs' characterization of the document, to which no response is required; to the extent they may be deemed allegations of fact, the United States lacks knowledge or information sufficient to form a belief as to the allegations and on that basis denies those allegations. In response to the third sentence of Paragraph 70, the United States avers that the Corps continued to operate the Addicks and Barker Dams throughout August 28, 2017, and, as a component of its operation, water continued to be released and the flow of water in Buffalo Bayou fluctuated throughout the day. The United States denies the remaining allegations contained in the third sentence of paragraph 70.

71. The allegations in paragraph 71 of the Complaint contain Plaintiffs' characterization of maps posted on a Corps website. The United States avers that the document is the best evidence of its content. The remaining allegations in paragraph 71 represent Plaintiffs' characterization of the Corps document, to which no response is required; to the extent they may be deemed allegations of fact, the United States lacks knowledge or information sufficient to form a belief as to the allegations and on that basis denies those allegations.

72. The allegations in paragraph 72 of the Complaint contain Plaintiffs' characterization of maps posted on a Corps website. The United States admits that the Corps posted Buffalo Bayou inundation maps on the cited website on or about August 29, 2017; those maps and the website speak for themselves and are the best evidence of their content. The remaining allegations in paragraph 72 represent Plaintiffs' characterization of the Corps documents, to which no response is required; to the extent they may be deemed allegations of fact, the United States lacks knowledge or information sufficient to form a belief as to the allegations and on that basis denies those allegations.

73. The United States avers that Appendix C to the Complaint appears to be a map showing, in part, the Corps' map referenced in footnote 11 of paragraph 73 of the Complaint overlaid with additional information. The United States lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 73 and on that basis denies those allegations.

74. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 74 of the Complaint and on that basis denies those allegations.

75. The allegations in paragraph 75 of the Complaint contain Plaintiffs' characterization of an August 30, 2017 press release. The United States avers that the document is the best evidence of its content. The remaining allegations in paragraph 75 represent Plaintiffs' characterization of the press release, to which no response is required; to the extent they may be deemed allegations of fact, the United States lacks knowledge or information sufficient to form a belief as to the allegations and on that basis denies those allegations.

76. The allegations in paragraph 76 of the Complaint contain Plaintiffs' characterization of an August 29, 2017 press release. The United States avers that the document is the best evidence of its content. The remaining allegations in paragraph 76 represent Plaintiffs' characterization of the press release, to which no response is required; to the extent they may be deemed allegations of fact, the United States lacks knowledge or information sufficient to form a belief as to the allegations and on that basis denies those allegations.

77. The allegations in paragraph 77 of the Complaint contain Plaintiffs' characterization of a post made on www.facebook.com and a September 2, 2017 press release. The United States avers that those documents are the best evidence of their content. The remaining allegations in paragraph 77 represent Plaintiffs' characterization of the press release, to which no response is required; to the extent they may be deemed allegations of fact, the United States lacks knowledge or information sufficient to form a belief as to the allegations and on that basis denies those allegations.

78. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 78 of the Complaint and on that basis denies those allegations. The United States specifically denies that its actions violated the Fifth Amendment to the United States Constitution.

79. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 79 of the Complaint and on that basis denies those allegations. The United States specifically denies that its actions violated the Fifth Amendment to the United States Constitution.

80. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 80 of the Complaint and on that basis denies those allegations.

81. The United States denies the allegations contained in the first and third sentences of Paragraph 81 of the Complaint. The allegations in the second sentence of Paragraph 81 are conclusions of law, to which no response is required; to the extent they may be deemed allegations of fact, they are denied.

82. In response to the first sentence of Paragraph 82 of the Complaint, the United States avers that the Corps utilizes advanced modeling techniques to make predictions about flooding. In response to the second sentence of paragraph 82, the United States avers that the maps the Corps produced are the best evidence of their content. The remaining allegations of paragraph 82 are Plaintiffs' characterization of their claims and conclusions of law, to which no response is required; to the extent they may be deemed allegations of fact, they are denied.

83. The United States denies the allegations contained in the first sentence of paragraph 83 of the Complaint. The United States lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 83 and on that basis denies those allegations

84. The allegations of paragraph 84 of the Complaint contain conclusions of law, to which no response is required; to the extent they may be deemed allegations of fact, they are denied. The United States specifically denies that its actions violated the Fifth Amendment to the United States Constitution.

85. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 85 of the Complaint and on that basis denies those allegations.

86. The United States denies the allegations contained in paragraph 86 of the Complaint.

87. The allegations in paragraph 87 of the Complaint contain conclusions of law to which no response is required; to the extent they may be deemed allegations of fact, they are denied.

88. The allegations in paragraph 88 of the Complaint are Plaintiffs' characterization of their claims and conclusions of law, to which no response is required; to the extent they may be deemed allegations of fact, they are denied.

89. The allegations in paragraph 89 of the Complaint are Plaintiffs' characterization of their claims and conclusions of law, to which no response is required; to the extent they may be deemed allegations of fact, they are denied.

REPRESENTATIVE CLASS PLAINTIFFS' CLASS ACTION ALLEGATIONS

90. In response to paragraph 90 of the Complaint, the United States incorporates by reference its responses to the preceding statements and allegations.

91. The allegations in paragraph 91 of the Complaint are Plaintiffs' characterization of their claims and conclusions of law, to which no response is required; to the extent they may be deemed allegations of fact, they are denied. The United States further avers that class action under RCFC 23 is not appropriate in this matter.

92. The allegations in paragraph 92 of the Complaint are Plaintiffs' characterization of their claims and conclusions of law, to which no response is required; to the extent they may be deemed allegations of fact, they are denied. The United States further avers that class action under RCFC 23 is not appropriate in this matter.

93. The allegations in paragraph 93 of the Complaint are Plaintiffs' characterization of their claims and conclusions of law, to which no response is required; to the extent they may be deemed allegations of fact, they are denied. The United States further avers that class action under RCFC 23 is not appropriate in this matter.

94. The allegations in paragraph 94 of the Complaint are conclusions of law, to which no response is required; to the extent they may be deemed allegations of fact, they are denied. The United States further avers that class action under RCFC 23 is not appropriate in this matter.

95. The allegations in paragraph 95 of the Complaint are conclusions of law, to which no response is required; to the extent they may be deemed allegations of fact, they are denied. The United States further avers that class action under RCFC 23 is not appropriate in this matter.

96. The allegations in paragraph 96 of the Complaint are conclusions of law, to which no response is required; to the extent they may be deemed allegations of fact, they are denied. The United States further avers that class action under RCFC 23 is not appropriate in this matter.

97. The allegations in paragraph 97 of the Complaint are conclusions of law, to which no response is required; to the extent they may be deemed allegations of fact, they are denied. The United States further avers that class action under RCFC 23 is not appropriate in this matter.

98. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 98 of the Complaint and on that basis denies

those allegations. The United States further avers that class action under RCFC 23 is not appropriate in this matter.

99. The allegations in paragraph 99 of the Complaint are conclusions of law, to which no response is required; to the extent they may be deemed allegations of fact, the United States lacks knowledge or information sufficient to form a belief as to the truth of any such factual allegations and on that basis denies those allegations. The United States further avers that class action under RCFC 23 is not appropriate in this matter.

100. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 100 of the Complaint and on that basis denies those allegations. The United States further avers that class action under RCFC 23 is not appropriate in this matter.

FIRST CAUSE OF ACTION

101. In response to paragraph 101 of the Complaint, the United States incorporates by reference its responses to the preceding statements and allegations.

102. The allegations in paragraph 102 of the Complaint are conclusions of law, to which no response is required; to the extent they may be deemed allegations of fact, they are denied.

103. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 103 of the Complaint and on that basis denies those allegations.

104. The allegations in paragraph 104 of the Complaint are conclusions of law, to which no response is required; to the extent they may be deemed allegations of fact, they are denied.

105. The United States denies the allegations contained in paragraph 105 of the Complaint.

106. The United States denies the allegations contained in paragraph 106 of the Complaint.

107. The United States denies the allegations contained in paragraph 107 of the Complaint.

108. The allegations in paragraph 108 of the Complaint are Plaintiffs' characterization of their claims and conclusions of law, to which no response is required; to the extent they may be deemed allegations of fact, they are denied.

109. The allegations in paragraph 109 of the Complaint are Plaintiffs' characterization of their claims and conclusions of law, to which no response is required; to the extent they may be deemed allegations of fact, they are denied.

110. The United States admits that the flooding caused by Hurricane Harvey was extreme and unprecedented in magnitude. The United States denies that actions by the Corps caused or contributed to the flooding following Hurricane Harvey. The United States denies the remaining allegations contained in paragraph 110 of the Complaint.

111. The allegations in paragraph 111 of the Complaint are Plaintiffs' characterization of their claims and conclusions of law, to which no response is required; to the extent they may be deemed allegations of fact, they are denied.

112. The United States denies the allegations contained in paragraph 112 of the Complaint.

113. The United States denies the allegations contained in paragraph 113 of the Complaint.

114. The United States denies the allegations contained in paragraph 114 of the Complaint.

115. The United States avers that the Corps issued public warnings approximately six hours prior to operating the Addicks and Barker Dams by opening their floodgates. The United States denies the remaining allegations in paragraph 115 of the Complaint.

116. The United States denies the allegations contained in paragraph 116 of the Complaint.

117. The allegations in paragraph 117 of the Complaint are Plaintiffs' characterization of their claims and conclusions of law, to which no response is required; to the extent they may be deemed allegations of fact, they are denied.

118. The United States denies the allegations contained in paragraph 118 of the Complaint.

119. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 119 of the Complaint and on that basis denies those allegations.

120. The allegations in paragraph 120 of the Complaint are Plaintiffs' characterization of their claims and conclusions of law, to which no response is required; to the extent they may be deemed allegations of fact, they are denied.

121. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 121 of the Complaint and on that basis denies those allegations.

122. The allegations in paragraph 122 of the Complaint are Plaintiffs' characterization of their claims and conclusions of law, to which no response is required; to the extent they may be deemed allegations of fact, they are denied.

123. The allegations in paragraph 123 of the Complaint are Plaintiffs' characterization of their claims and conclusions of law, to which no response is required; to the extent they may be deemed allegations of fact, they are denied.

SECOND CAUSE OF ACTION

124. The allegations in paragraph 124 of the Complaint are Plaintiffs' characterization of their claims and conclusions of law, to which no response is required; to the extent they may be deemed allegations of fact, they are denied.

REQUESTED RELIEF

125. The United States denies that Plaintiffs are entitled to any of the relief requested in paragraph 125 of the Complaint containing Plaintiffs' Prayer for Relief, or to any relief whatsoever.

General Denial

Unless specifically admitted, the United States denies each and every factual allegation in the Plaintiffs' Complaint.¹

¹ The United States lists several defenses here. Several of these defenses are not "affirmative defenses," and inclusion here does not constitute a concession that the United States bears the burden of proof with respect to any of these defenses.

First Defense

The Court lacks subject matter jurisdiction over Plaintiffs' claims that sound in tort.

Second Defense

Plaintiffs' Complaint fails to state a claim upon which relief may be granted.

Third Defense

Plaintiffs' claims are barred by the doctrine of relative or comparative benefits.

Fourth Defense

Plaintiffs' claims are barred by the doctrine of necessity.

WHEREFORE, the United States of America denies that Plaintiffs are entitled to the relief they pray for, or any relief whatsoever, and requests that judgment be entered for the United States, and that the United States be allowed such other further relief as the Court may allow.

Dated: February 28, 2018

Respectfully submitted,

JEFFREY H. WOOD
ACTING ASSISTANT ATTORNEY GENERAL
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