

C. Marie Eckert, OSB No. 883490
marie.eckert@millernash.com
Suzanne C. Lacampagne, OSB No. 951705
suzanne.lacampagne@millernash.com
MILLER NASH GRAHAM & DUNN LLP
3400 U.S. Bancorp Tower
111 S.W. Fifth Avenue
Portland, Oregon 97204
Telephone: (503) 224-5858
Facsimile: (503) 224-0155

Roger R. Martella, Jr.
rmartella@sidley.com
Quin M. Sorenson
qsorenson@sidley.com
Benjamin E. Tannen
btannen@sidley.com
(*to be specially admitted*)
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
Telephone: (202) 736-8000
Facsimile: (202) 736-8711

Attorneys for Intervenor-Defendants
The National Association of Manufacturers,
American Fuel & Petrochemical Manufacturers,
and American Petroleum Institute

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

KELSEY CASCADIA ROSE JULIANA, et
al.,

Case No. 6:15-cv-01517-TC

Plaintiffs,

MOTION TO DISMISS

v.

Request for Oral Argument

UNITED STATES OF AMERICA, et al.,

Defendants.

MOTION TO DISMISS

Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), Intervenor-Defendants move the Court to dismiss Plaintiffs' First Amended Complaint for Declaratory and Injunctive Relief (Doc. 7). Pursuant to Local Rule 7-1, the Intervenor-Defendants have conferred with counsel for both Defendants and Plaintiffs regarding this motion, and have been advised that the Defendants do not oppose the motion while the Plaintiffs object to the motion.

The grounds for this motion are that Plaintiffs fail to state a claim upon which relief can be granted as Plaintiffs lack a federal cause of action, and they do not and cannot plead the required elements of a valid federal cause of action. Additionally, no court has jurisdiction over Plaintiffs' claim as Plaintiffs' suit raises non-justiciable political questions and Plaintiffs lack standing. This motion is based on the accompanying memorandum of law, the pleadings, and other papers on file in this action, and on such other argument as may be presented to the Court on reply.

WHEREFORE, Intervenor-Defendants respectfully request that their motion to dismiss be granted.

DATED this 12th day of November, 2015.

MILLER NASH GRAHAM & DUNN LLP

/s/ C. Marie Eckert

C. Marie Eckert, OSB No. 883490

marie.eckert@millernash.com

Suzanne C. Lacampagne, OSB No. 951705

suzanne.lacampagne@millernash.com

Telephone: (503) 224-5858

Facsimile: (503) 224-0155

SIDLEY AUSTIN LLP

Roger R. Martella, Jr.

rmartella@sidley.com

Quin M. Sorenson
Benjamin E. Tannen
(to be specially admitted)
1501 K Street, N.W.
Washington, D.C. 20005
Telephone: (202) 736-8000
Facsimile: (202) 736-8711

*Attorneys for Intervenor-Defendants The National
Association of Manufacturers, American Fuel &
Petrochemical Manufacturers, and American
Petroleum Institute*

MANUFACTURERS' CENTER FOR LEGAL
ACTION

Linda E. Kelly
Quentin Riegel
qriegel@nam.org
733 10th Street, NW, Suite 700
Washington, DC 20001
Telephone: (202) 637-3000
Facsimile: (202) 637-3182

AMERICAN FUEL & PETROCHEMICAL
MANUFACTURERS

Richard Moskowitz
RMoskowitz@afpm.org
1667 K Street, NW, Suite 700
Washington, DC 20006
Telephone: (202) 457-0480
Facsimile: (202) 457-0486

I hereby certify that I served the foregoing Motion to Dismiss on:

Julia A. Olson
Wild Earth Advocates
1216 Lincoln Street
Eugene, Oregon 97401
E-mail: juliaaolson@gmail.com

Attorney for Plaintiffs

Philip L. Gregory
Cotchett, Pitre & McCarthy, LLP
840 Malcolm Road
Burlingame, California 94010
E-mail: pgregory@cpmlegal.com

Attorney for Plaintiffs

Daniel M. Galpern
Law Offices of Daniel M. Galpern
1641 Oak Street
Eugene, Oregon 97401
E-mail: dan.galpern@gmail.com

Attorney for Plaintiffs

Justin Torres
U.S. Department of Justice
Environment & Natural Resources
Division
Natural Resources Section
601 D. Street NW
Washington, D.C. 20044
E-mail: justin.torres@usdoj.gov

Attorney for Defendants

by the following indicated method or methods on the date set forth below:

- ☒ **CM/ECF system transmission.**
- ☐ **E-mail.** As required by Local Rule 5.2, any interrogatories, requests for production, or requests for admission were e-mailed in Word or WordPerfect format, not in PDF, unless otherwise agreed to by the parties.
- ☐ **Facsimile communication device.**
- ☐ **First-class mail, postage prepaid.**
- ☐ **Hand-delivery.**

DATED this 12th day of November, 2015.

/s/ C. Marie Eckert

C. Marie Eckert, P.C.
Oregon State Bar No. 883490

*Of Attorneys for Intervenor-Defendants The
National Association of Manufacturers,
American Fuel & Petrochemical
Manufacturers, and American Petroleum
Institute*