

CIVIL COVER SHEET

Friday, 16 January, 2015 12:14:52 PM
U.S. District Court, LCD

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

STEVEN L. HAMRICK, et al.

DEFENDANTS

GENERAL SERVICES ADMINISTRATION, et al.

(b) County of Residence of First Listed Plaintiff Bureau
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant District of Columbia
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)
Michael F. Iasparro / Hinshaw & Culbertson LLP
100 Park Avenue
Rockford, IL 61101 (815) 490-4900

Attorneys (If Known)
Unknown

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/REPLEVY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS--Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 42 U.S.C. Sections 1600-1687 and 5 U.S.C. Sections 701-706

Brief description of cause:
 National Environmental Policy Act violation

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE
01/15/2015

SIGNATURE OF ATTORNEY OF RECORD
s/Michael F. Iasparro

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG JUDGE _____

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

STEVEN L. HAMRICK, TAMELA M. KELM,)
LARRY GERDES, STEVEN GERDES,)
EDWARD J. GERDES, THE BERTIE L.)
GERDES TRUST, THE HERBERT C.)
GERDES FAMILY TRUST, FRIESLAND)
FARMS, LLC, an Illinois Limited Liability)
Company, KURT PETERSON, JULIE)
PETERSON, DEANNA WILT, RONALD)
VONHOLTEN, RONALD PIERSON, CARI)
PIERSON, CHARLES PETERSON, LINDA)
PETERSON, DAVID W. LIND, KAREN LIND,)
JEFFREY S. WAGENKNECHT, TARA B.)
WAGENKNECHT, ADAM SOBOTTKA,)
DARRI DIMMIG, CHRIS VONHOLTEN,)
JULIA VONHOLTEN, DALE RUSSELL)
BURKEY, DESSA BLONDIN, RON AMREIN,)
BARB AMREIN, and STEVEN L.)
SCHRADER,)

Plaintiffs,

v.

GENERAL SERVICES ADMINISTRATION,)
an administrative agency of the United States)
Government, MG2 TRIBAL ENERGY, LLC, a)
Delaware limited liability company,)
GERONIMO WIND ENERGY, LLC, a)
Minnesota limited liability company d/b/a)
GERONIMO ENERGY, LLC, and WALNUT)
RIDGE WIND, LLC, a Delaware limited)
liability company,)

Defendants.

Case No.

Judge:

EQUITABLE RELIEF IS SOUGHT

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This is a civil action for declaratory and injunctive relief, arising under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701-706, and alleging violations of the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 1600-1687.

2. Plaintiffs seek a declaration that Defendant GENERAL SERVICES ADMINISTRATION ("GSA") violated federal law by failing to prepare an environmental analysis and environmental impact statement addressing the environmental consequences of a 10-year Power Purchase Agreement ("PPA") entered into between GSA and MG2 TRIBAL ENERGY, LLC ("MG2"), for the purchase of electricity to be generated by the planned Walnut Ridge "wind farm" in Bureau County, Illinois (hereinafter the Walnut Ridge "wind farm" is also referred to as "the Project").

3. Plaintiffs also seek injunctive relief to redress the injuries caused by these violations of the law and to preserve the status quo pending compliance with the law.

4. By initiating this action, Plaintiffs seek to: (1) obtain a declaration that GSA's failure to prepare any, or an adequate, environmental analysis or environmental impact statement addressing the environmental consequences of the Project violates NEPA; (2) compel the GSA to prepare an adequate environmental analysis and environmental impact statement for the Project that complies with NEPA; (3) enjoin GSA, MG2, and GERONIMO WIND ENERGY, LLC d/b/a GERONIMO ENERGY, LLC ("Geronimo"), and each of their contractors, assigns and other agents from operation and performance of the PPA, unless and until this Court determines that the violations of law set forth herein have been corrected; and (4) enjoin Geronimo and WALNUT RIDGE WIND, LLC ("WRW"), and each of their contractors, assigns and other agents, from further planning, development, construction or operation of the Project, including proceeding with petitions to secure conditional use permits in Bureau County, Illinois, unless and until this Court determines that the violations of law set forth herein have been corrected.

5. Should Plaintiffs prevail, they will seek an award of costs and attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

JURISDICTION

6. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1331 (federal question), § 1346 (United States as a defendant), § 2201 (injunctive relief), and § 2202 (declaratory relief). The current cause of action arises under the laws of the United States, including the APA and NEPA. An actual, justiciable controversy exists between Plaintiffs and Defendants. The requested relief is proper under 28 U.S.C. §§ 2201-2202, 5 U.S.C. §§ 705-706, and Federal Rule of Civil Procedure 65.

VENUE

7. Venue in this Court is proper under 28 U.S.C. § 1391 because all or a substantial part of the events or omissions giving rise to the claims herein occurred within this judicial district and a substantial part of the property that is the subject of this action is situated within this judicial district. The Project would entail construction and operation of a "wind power facility," commonly known as a "wind farm," consisting of 123 industrial size wind turbine generators and related facilities, including two electrical collector substations, one staging area, and one operation and maintenance facility, on agricultural land encompassing approximately 14,500 acres in Bureau County, Illinois. The Project will be the source of the energy that is the subject of the PPA, and is planned for development, construction and operation in Bureau County, Illinois, which is within this District and Division. All of the properties of the Plaintiff Parties hereto that are detailed in this Complaint will be adversely affected by the imminent development, construction and operation of the Project.

PARTIES

8. Plaintiffs STEVEN L. HAMRICK and TAMELA M. KELM own property located in Princeton, Illinois. They received notice of public hearings to be held on Defendant WRW's 2014 applications for a total of 127 new conditional use permits to install 123 wind turbine generators as well as two electrical collector substations, one staging area, and one operation and maintenance facility in Bureau County, Illinois.

9. Plaintiff LARRY GERDES is the manager of FRIESLAND FARMS, LLC. He also owns property located in Walnut, Illinois. Plaintiff LARRY GERDES received notice of public hearings to be held on Defendant WRW's 2014 applications for a total of 127 new conditional use permits to install 123 wind turbine generators as well as two electrical collector substations, one staging area, and one operation and maintenance facility in Bureau County, Illinois.

10. Plaintiff STEVEN GERDES owns property in Bureau County, Illinois, including property within approximately one mile of the Walnut Ridge "wind farm," consisting of: a) approximately 180 acres plus a house and substantial buildings at the intersection of Route 92 and 1700E, generally located in the Southeast quarter of Section 11 and Northwest quarter of Section 14; b) approximately 158 acres at the intersection of 2700N and 1700E, generally located in the Southwest quarter of Section 13; c) approximately 76.5 acres on 2500N between 1700E and 1800E, generally located in the Southeast quarter of Section 25; d) approximately 236.5 acres at the intersection of 1700E and 2500N, generally located in the North half of Section 36; e) approximately 79 acres at the intersection of 1700E and 2500N, generally located in the Southeast quarter of Section 26; f) approximately 80 acres at the intersection of 1600E and 2500N, generally located in the Southwest quarter of Section 26; g) approximately 77 acres at

the intersection of 1500E and 2600N, generally located in the Northwest quarter of Section 27; h) approximately 80 acres at the intersection of 1400E (the Walnut/Wyanet Road) and between 2700N and 2600N, generally located in the South half of Section 21; and i) approximately 40 acres at the intersection of 1500E and Route 92, generally located in the Southeast quarter of Section 9. Plaintiff STEVEN GERDES also owns properties located in the Village of Walnut. Plaintiff STEVEN GERDES also received notice of public hearings to be held on Defendant WRW's 2014 applications for a total of 127 new conditional use permits to install 123 wind turbine generators as well as two electrical collector substations, one staging area, and one operation and maintenance facility in Bureau County, Illinois.

11. Plaintiff EDWARD J. GERDES lives in Princeton, Illinois. He also owns properties located in the Village of Walnut, Illinois. Plaintiff EDWARD J. GERDES also received notice of public hearings to be held on Defendant WRW's 2014 applications for a total of 127 new conditional use permits to install 123 wind turbine generators as well as two electrical collector substations, one staging area, and one operation and maintenance facility in Bureau County, Illinois.

12. Plaintiffs, THE BERTIE L. GERDES TRUST and THE HERBERT C. GERDES FAMILY TRUST own property in Bureau County, Illinois, including property within approximately one mile of the Walnut Ridge "wind farm," consisting of: a) approximately 164 acres at the intersection of Route 92 and 1700E, generally located in the Southwest quarter of Section 12 and Northwest quarter of Section 13; b) approximately 39 acres at the intersection of Route 92 and 1700E, generally located in the Southwest quarter of Section 10; c) approximately 313 acres plus a substantial home and buildings on 1600E and 1500E between Route 92 and 2700N, generally located in the North half and Southeast quarter of Section 15; and d)

approximately 31 acres generally near the intersection of Route 92 and 1600E, generally located in the Southwest quarter of Section 10. Both Trusts also received notice of public hearings to be held on Defendant WRW's 2014 applications for a total of 127 new conditional use permits to install 123 wind turbine generators as well as two electrical collector substations, one staging area, and one operation and maintenance facility in Bureau County, Illinois.

13. Plaintiff FRIESLAND FARMS, LLC ("Friesland") is an Illinois limited liability company that owns property in Bureau County and Lee County, Illinois, including property within approximately one mile of the Walnut Ridge "wind farm," specifically the farms commonly known as the Hurst, Heaton, Johnson and Mattes Farms. The Hurst Farm is located at E ½ L2 & L1 NE & NE SE, and consists of 148.56 acres in Walnut Township, Section 2 of Bureau County. The Heaton Farm consists of 153.86 acres and is located in Section 36 of Hamilton Township in Lee County. The Johnson Farm consists of 157.34 acres and is located in Section 36 of Hamilton Township in Lee County. The Mattes Farm consists of 157.34 acres and is located in Section 36 of Hamilton Township in Lee County. Friesland received notice of public hearings to be held on Defendant WRW's 2014 applications for a total of 127 new conditional use permits to install 123 wind turbine generators as well as two electrical collector substations, one staging area, and one operation and maintenance facility in Bureau County, Illinois.

14. Plaintiffs KURT PETERSON and JULIE PETERSON own the residence at 1700E, carved out of the farm generally located in the Southwest quarter of Section 12 and Northwest quarter of Section 13. They also received notice of public hearings to be held on Defendant WRW's 2014 applications for a total of 127 new conditional use permits to install 123

wind turbine generators as well as two electrical collector substations, one staging area, and one operation and maintenance facility in Bureau County, Illinois.

15. Plaintiff DEANNA WILT owns property consisting of approximately two acres together with a substantial residence located in Walnut, Illinois. She also owns and farms approximately 76 acres located in Section 27 of Walnut Township and leases and farms an additional 480 acres located in the proposed Walnut Ridge “wind farm.” She also received notice of public hearings to be held on Defendant WRW’s 2014 applications for a total of 127 new conditional use permits to install 123 wind turbine generators as well as two electrical collector substations, one staging area, and one operation and maintenance facility in Bureau County, Illinois.

16. Plaintiff RONALD VONHOLTEN owns property located in the Village of Walnut, Illinois. He also received notice of the public hearing to be held on Defendant WRW’s 2014 applications for a total of 127 new conditional use permits to install 123 wind turbine generators as well as two electrical collector substations, one staging area, and one operation and maintenance facility in Bureau County, Illinois.

17. Plaintiffs RONALD PIERSON and CARI PIERSON own property located in Walnut, Illinois. They also own and farm the “Baumgartner Farm” in Walnut, Illinois, which will be surrounded and affected by the wind turbine generators to be installed as part of the proposed Walnut Ridge “wind farm” project. They also received notice of the public hearing to be held on Defendant WRW’s 2014 applications for a total of 127 new conditional use permits to install 123 wind turbine generators as well as two electrical collector substations, one staging area, and one operation and maintenance facility in Bureau County, Illinois.

18. Plaintiffs CHARLES PETERSON and LINDA PETERSON own property including a residence and other buildings located in Walnut, Illinois. They also received notice of public hearings to be held on Defendant WRW's 2014 applications for a total of 127 new conditional use permits to install 123 wind turbine generators as well as two electrical collector substations, one staging area, and one operation and maintenance facility in Bureau County, Illinois.

19. Plaintiffs DAVID W. LIND and KAREN LIND reside in Walnut, Illinois. They own and farm approximately 80 acres on the north side of 2700N Avenue (directly across the road from their residence) in Section 15, as well as approximately 91 acres on the north side of 2700N Avenue and east side of 1600E Street in Section 14, along with approximately 120 acres in Section 12, on the north side of Route 92 and east side of 1700E Street. They also received notice of public hearings to be held on Defendant WRW's 2014 applications for a total of 127 new conditional use permits to install 123 wind turbine generators as well as two electrical collector substations, one staging area, and one operation and maintenance facility in Bureau County, Illinois.

20. Plaintiffs JEFFREY S. WAGENKNECHT and TARA B. WAGENKNECHT own property located in Walnut, Illinois. They also received notice of the public hearing to be held on Defendant WRW's 2014 applications for a total of 127 new conditional use permits to install 123 wind turbine generators as well as two electrical collector substations, one staging area, and one operation and maintenance facility in Bureau County, Illinois.

21. Plaintiff ADAM SOBOTKA rents as his principal residence property located in Walnut, Illinois. He also farms, as part of Dimmig Farms' operation, property which will be surrounded and affected by wind turbine generators to be installed as part of the proposed

Walnut Ridge “wind farm.” He also received notice of the public hearing to be held on Defendant WRW’s 2014 applications for a total of 127 new conditional use permits to install 123 wind turbine generators as well as two electrical collector substations, one staging area, and one operation and maintenance facility in Bureau County, Illinois.

22. Plaintiff DARRI DIMMIG owns property located in Princeton, Illinois. DARRI DIMMIG is both the owner and operator of Dimmig Farms, which leases and farms property of 14 distinct land owners and 22 farms which will be surrounded and affected by wind turbine generators to be installed as part of the proposed Walnut Ridge “wind farm.” He also received notice of the public hearing to be held on Defendant WRW’s 2014 applications for a total of 127 new conditional use permits to install 123 wind turbine generators as well as two electrical collector substations, one staging area, and one operation and maintenance facility in Bureau County, Illinois.

23. Plaintiffs CHRIS VONHOLTEN and JULIA VONHOLTEN own property located in Walnut, Illinois. CHRIS VONHOLTEN also farms and leases property which will be surrounded and affected by wind turbine generators to be installed as part of the proposed Walnut Ridge “wind farm.” They also received notice of the public hearing to be held on Defendant WRW’s 2014 applications for a total of 127 new conditional use permits to install 123 wind turbine generators as well as two electrical collector substations, one staging area, and one operation and maintenance facility in Bureau County, Illinois.

24. Plaintiff DALE RUSSELL BURKEY owns property located in the Village of Walnut, Illinois. He also received notice of the public hearing to be held on Defendant WRW’s 2014 applications for a total of 127 new conditional use permits to install 123 wind turbine

generators as well as two electrical collector substations, one staging area, and one operation and maintenance facility in Bureau County, Illinois.

25. Plaintiff DESSA BLONDIN owns property located in the Village of Walnut, Illinois. She also received notice of the public hearing to be held on Defendant WRW's 2014 applications for a total of 127 new conditional use permits to install 123 wind turbine generators as well as two electrical collector substations, one staging area, and one operation and maintenance facility in Bureau County, Illinois.

26. Plaintiffs RON AMREIN and BARB AMREIN own property located in Princeton, Illinois. They also received notice of public hearings to be held on Defendant WRW's 2014 applications for a total of 127 new conditional use permits to install 123 wind turbine generators as well as two electrical collector substations, one staging area, and one operation and maintenance facility in Bureau County, Illinois.

27. Plaintiff STEVEN L. SCHRADER owns residential property located in the Village of Walnut, Illinois. He also received notice of the public hearing to be held on Defendant WRW's 2014 applications for a total of 127 new conditional use permits to install 123 wind turbine generators as well as two electrical collector substations, one staging area, and one operation and maintenance facility in Bureau County, Illinois.

28. Defendant GENERAL SERVICES ADMINISTRATION is an administrative agency of the United States Government.

29. Defendant MG2 TRIBAL ENERGY, LLC is a Delaware limited liability company with its headquarters and principal place of business located at 7650 Edinborough Way, Suite 725, Edina, Minnesota, the same address for GERONIMO WIND ENERGY, LLC's headquarters and principal place of business. MG2 is a joint venture between Defendant

GERONIMO WIND ENERGY, LLC and the Mesa Grande Band of Mission Indians, a federally-recognized Indian tribe from the San Diego, California area. Upon information and belief, MG2 is a shell entity, controlled and operated by GERONIMO, and formed for the sole basis of taking advantage of a preference included in Title 25 of the United States Code, which states that "[i]n purchasing electricity or any other energy product or byproduct, a Federal agency or department may give preference to an energy and resource production enterprise, partnership, consortium, corporation, or other type of business organization the majority of the interest in which is owned and controlled by 1 or more Indian tribes." 25 U.S.C. § 3502(d).

30. Defendant GERONIMO WIND ENERGY, LLC is a Minnesota limited liability company, with its headquarters and principal place of business located at 7650 Edinborough Way, Suite 725, Edina, Minnesota. GERONIMO is registered to do business in the State of Illinois under the name GERONIMO ENERGY, LLC. Upon information and belief, GERONIMO owns Defendant WALNUT RIDGE WIND, LLC.

31. Non-party the Mesa Grande Band of Mission Indians ("Mesa Grande") is a federally-recognized Native American tribe located in northern San Diego County, California. Upon information and belief, they own and control, in name only but not in substance or practice, a majority interest in MG2 TRIBAL ENERGY, LLC, and were solicited by GERONIMO to enter into the MG2 joint venture for the sole purpose of taking advantage of the preference created by Title 25, United States Code, Section 3502(d). Upon information and belief, prior to MG2 entering into the power purchase agreement with GSA, Mesa Grande had no prior experience, expertise or involvement with the wind energy industry, or with the development, construction or operation of any wind energy development or "wind farm."

32. Defendant WALNUT RIDGE WIND, LLC is a Delaware limited liability company, owned by GERONIMO, which is registered to do business in the State of Illinois. On October 27, 2014, WRW filed applications for conditional use permits with the Bureau County, Illinois Planning and Zoning Department, seeking a total of 127 conditional use permits to construct and operate a "wind power facility," commonly known as a "wind farm," consisting of 123 industrial wind turbine generators and related facilities, including two electrical collector substations, one staging area, and one operation and maintenance facility, on agricultural land encompassing approximately 14,500 acres in Bureau County, Illinois ("the Project").

HISTORY OF THE WALNUT RIDGE WIND FARM PROJECT

33. In April 2006, Midwest Energy Development Group, LLC and Edison Mission Midwest, Inc., formed WRW for the purpose of developing and constructing a "wind power facility," or "wind farm," in Bureau County, Illinois.

34. In March of 2008, WRW submitted conditional use permit applications for the Project to the Bureau County Planning and Zoning Department. At that time, the Project consisted of 148 industrial wind turbine generators and associated project components.

35. Bureau County approved WRW's conditional use permit applications for the Project in 2008.

36. In January 2011, WRW applied for, and received an extension of its 2008 conditional use permits from Bureau County, extending the time for WRW to begin construction of the Project to December 31, 2014.

37. In March 2013, GERONIMO acquired WRW.

38. Between 2008 and the end of 2014, WRW did not construct any portion of the Project, and did not erect a single industrial wind turbine generator pursuant to the conditional use permits it had been granted by Bureau County in 2008.

39. Rather, on or about October 27, 2014, WRW filed new applications for conditional use permits with the Bureau County Planning and Zoning Department, seeking new permits in lieu of proceeding to construct the Project under Bureau County's 2011 extension of the 2008 conditional use permits.

40. The Bureau County Zoning Board of Appeals is scheduled to begin hearings on WRW's 2014 conditional use permit applications at its meeting on January 22, 2015.

THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

41. Congress enacted NEPA in 1969, directing all federal agencies to assess the environmental impact of proposed actions that significantly affect the quality of the environment. 42 U.S.C. § 4332(2)(C). NEPA's disclosure goals are two-fold: (1) to ensure that the agency has carefully and fully contemplated the environmental effects of its action; and (2) to ensure that the public has sufficient information to challenge the agency's action.

42. The Council on Environmental Quality (CEQ) promulgated uniform regulations to implement NEPA that are binding on all federal agencies. 42 U.S.C. § 4342; 40 C.F.R. §§ 1500-1508.

43. The regulations implementing NEPA require the GSA to disclose and analyze the environmental effects of the proposed action. 40 C.F.R. § 1500.1(b). Specifically, the regulation explains that "NEPA procedures must ensure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA." *Id.*

44. NEPA requires that environmental information be made available to public officials and citizens before decisions are made and before actions are taken. 40 C.F.R. § 1500.1(b). The information must be of high quality, and the agency must ensure the "scientific

integrity of the discussions and analyses in environmental impact statements." *Id.* § 1502.24. The purpose of these requirements is to ensure that the public has information that allows it to question, understand, and, if necessary, challenge the decision made by the agency.

45. NEPA requires the agencies to prepare an Environmental Impact Statement ("EIS") when a major federal action is proposed that *may* significantly affect the quality of the environment. 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1501.4(a)(1).

46. An EIS is a "detailed written statement" that "provide[s] full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment." 40 C.F.R. §§ 1502.1, 1508.11.

47. When it is not clear whether or not an action will significantly affect the environment (and thus require the preparation of an EIS), the regulations direct agencies to prepare a document known as an Environmental Assessment ("EA") in order to determine whether an EIS is required. 40 C.F.R. §§ 1501.4(b), 1508.9. An EA is "a concise public document" that "[b]riefly provide[s] sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact." 40 C.F.R. § 1508.9(a). An EA "shall include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted." 40 C.F.R. § 1508.9(b).

48. The NEPA regulations require the agency to consider ten "significance factors" in determining whether a federal action may have a significant impact, thus requiring an EIS. 40 C.F.R. § 1508.27. Among other factors, the agency must consider the beneficial and adverse impacts of the project, the effect on public health and safety, unique characteristics of the

geographic area, the degree to which possible effects are highly controversial, uncertain, or involve unique or unknown risks, cumulatively significant effects, and whether the proposed action will violate any laws or standards of environmental protection. *Id.* If the agency's action may be environmentally significant according to any of the criteria, the agency must prepare an EIS. *Id.*

49. The agency implementing the project, not the public, has the burden of demonstrating that significant adverse effects will *not* occur as a result of the proposed project. 40 C.F.R. § 1508.13.

50. An adequate EA must consider both direct and indirect environmental impacts of the proposed action. 40 C.F.R. § 1508.8. Direct effects are caused by the action and occur at the same time and place as the proposed project. *Id.* § 1508.8(a). Indirect effects are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. *Id.* § 1508.8(b).

51. NEPA additionally requires the agency to assess the cumulative effects of its proposed action on the environment. 40 C.F.R. § 1508.7. Cumulative effects are defined as the impact resulting from the incremental impact of the proposed action when added to other past, present, and reasonably foreseeable future actions. *Id.* Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. *Id.*

THE ADMINISTRATIVE PROCEDURE ACT (APA)

52. The APA confers a right of judicial review on any person that is adversely affected by the agency action. 5 U.S.C. § 702. Upon review, the court shall "hold unlawful and set aside agency actions ... found to be arbitrary, capricious, an abuse of discretion or otherwise

not in accordance with the law" or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A), (D).

ENVIRONMENTAL IMPACT OF THE WALNUT RIDGE WIND FARM

53. GSA has available to it many traditional and alternative sources of electricity. However, by issuing the PPA for the Project, Defendant GSA has effectively enabled the Project and its 123 nearly 500-foot tall industrial wind turbines to be built in Bureau County, defacing and degrading the agricultural environment and otherwise causing significant adverse effects on the human and natural environment.

54. The proposed Walnut Ridge Wind Farm project, which upon information and belief is and will only be feasible based on the PPA with the GSA, will have a number of environmental impacts on neighboring residents and landowners, wildlife and the environment generally.

55. The Illinois Department of Natural Resources has consulted with Bureau County on the Project, and has determined that the Project as proposed "is in the vicinity of a number of records of endangered or threatened species, Illinois Natural Areas Inventory Sites, and Illinois Nature Preserves which could be affected by the construction and operation of such a facility. In addition, the proposed action may adversely affect the essential habitats of species protected by the Illinois Wildlife Code [520 ILCS 5] and the Illinois Fish & Aquatic Life Code [515 ILCS 5]."

56. In addition, upon information and belief, the development, construction, and operation of the planned Walnut Ridge "wind farm" by Defendants GERONIMO and WRW is incompatible with the surrounding uses of the Plaintiffs' Properties and will negatively affect Plaintiffs' use and enjoyment of their property by:

- a. creating incessant and annoying noise;

- b. creating visual disturbances from flashing lights, turning blades, and massive unsightly towers;
- c. destroying vistas and views;
- d. creating excessive traffic and noise from construction;
- e. creating hazards from ice throws and fire;
- f. negatively impacting the amount and number of wildlife such as birds and deer in the area to be viewed and enjoyed;
- g. increasing the mosquito population by decreasing the bat population;
- h. causing sleep deprivation from noise and infrasound and all the negative health impacts associated with such;
- i. negatively impacting the vestibular organs and causing health impacts from such;
- j. negatively impacting pets, livestock, and horses, and causing danger from frightened animals;
- k. creating excessive dust from access roads;
- l. interfering with airspace rights, including cellular and wireless communication signals;
- m. creating shadow flicker; and
- n. interfering with farming operations including aerial spraying or, if allowed, increasing the cost of spraying due to hazard avoidance.

57. Upon information and belief, due to the planned and imminent development, construction, and operation of the Walnut Ridge "wind farm" by Defendants GERONIMO and WRW, the value of the properties owned by the Plaintiffs identified herein (collectively referred

to as "Plaintiffs' Properties") have decreased significantly and will continue to decrease significantly in value.

FIRST CLAIM FOR RELIEF

GSA Violated NEPA by failing to complete an Environmental Assessment or Environmental Impact Statement

58. Plaintiffs incorporate by reference all preceding paragraphs.

59. NEPA requires federal agencies to publish an EIS analyzing and documenting the environmental impacts, including direct, indirect, and cumulative impacts, of "major federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(c).

60. "Major federal action" includes actions with effects that may be major and which are potentially subject to federal control and responsibility. 40 C.F.R. § 1508.18. Federal actions include "projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies." 40 C.F.R. § 1508.18.

61. When it is not clear whether an action requires the preparation of an EIS, agencies must prepare an EA to determine whether an EIS is required. 40 C.F.R. §§ 1501.4(b), 1508.9. An EA is a "concise public document" that must "briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact." 40 C.F.R. § 1508.9(a).

62. GSA is a federal agency.

63. The power purchase agreement ("PPA") entered into between GSA and MG2 is a major federal action. The agreement is for a term of 10 years, and binds the federal government to purchase 140 megawatts of power from the Walnut Ridge wind farm, estimated to produce approximately 500 gigawatt hours of electricity annually. According to GSA's own press release

announcing the agreement, it is "the largest wind energy purchase from a single source in federal contracting history."

64. Upon information and belief, performance under the PPA will only be possible through construction and operation of the Walnut Ridge wind farm, which is expected to result in all of the negative environmental impacts set forth in paragraph 56 above.

65. Upon information and belief, the PPA provides Defendants GERONIMO and WRW with the ability, including the financial security, to move forward with development, construction and operation of the Walnut Ridge wind farm, which they and their predecessors have heretofore not done due to lack of financial ability and security to move forward with the Project.

66. Upon information and belief, the future development, construction and operation of the Project would not be possible without the PPA.

67. The Project, in addition to the PPA, is a "major federal action" as that term is used in NEPA, inasmuch as GSA, through the PPA, is entirely or partly financing the Project, and GSA's participation by way of the PPA integrates the entire project.

68. Upon information and belief, GSA is, or will serve as, the sole or primary customer and/or consumer for electricity produced by the Project, and will to a large, if not complete, extent assure the feasibility and success of the Project, and particularly the ability of GERONIMO and WRW to proceed with the development, construction and operation of the Project.

69. Upon information and belief, without the GSA's participation and the PPA, it is doubtful the Project will ever be developed or, if developed, become feasible.

70. In addition to the PPA, the Project is a major federal action because it is in effect "entirely or partly financed, assisted or conducted" by GSA. Through the PPA, GSA is now, and will in the future, actively finance, assist and/or conduct the Project.

71. Undersigned counsel have searched GSA's publicly available "NEPA Library" electronic database, which serves as GSA's "repository for NEPA assessments, studies, guidance, and related documents." There is no listing of any NEPA assessment, study, guidance or related document pertaining to the PPA or the Walnut Ridge Wind Farm on GSA's website. See <http://www.gsa.gov/portal/content/103827> (last visited January 16, 2015).

72. Undersigned counsel also submitted a Freedom of Information Act ("FOIA") request to GSA, on November 10, 2014, seeking information and documents relating to any EIS or EA conducted by GSA in relation to the PPA or the Walnut Ridge Wind Farm. To date, GSA has not produced any documents responsive to the FOIA request, and instead transferred the FOIA request to the Department of Energy, which has verbally indicated, as of the date of the filing of this Complaint, that it has no documents responsive to the request.

73. Without observance of mandatory NEPA procedures, GSA's awarding of the PPA, and concomitant funding of the Project, is arbitrary, capricious, not in accordance with law, and without observance of procedures required by law. 5 U.S.C. § 706.

74. Plaintiffs are entitled to their reasonable fees, costs, and expenses associated with this litigation pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

PLAINTIFFS' PRAYERS FOR RELIEF

Plaintiffs respectfully request that this Court:

A. Declare that the GSA violated the National Environmental Policy Act, the Administrative Procedure Act, and their implementing regulations in considering and

entering into the Power Purchase Agreement with MG2 TRIBAL ENERGY and failing to consider and analyze the environmental impacts of the Power Purchase Agreement and the planned Walnut Ridge Wind Farm;

B. Order the GSA and MG2 TRIBAL ENERGY to cease and desist from reliance upon and enforcement of the Power Purchase Agreement, the PPA being an invalidly adopted agreement;

C. Enjoin GERONIMO and WRW from proceeding with any further development, construction or operation of the Walnut Ridge Wind Farm, including but not limited to proceeding with any applications for conditional use permits in Bureau County, Illinois;

D. Order GSA to complete an Environment Impact Statement with respect to the PPA and the Project;

E. Award Plaintiffs their costs of suit and attorneys' fees; and

F. Grant Plaintiffs such other and further relief as this Court deems just and equitable.

Respectfully submitted,

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