

1 The United States of America (“United States”), on behalf of all Defendants, in answer to
2 Plaintiff’s Complaint [ECF No. 1], admit, deny and allege as follows. Except as expressly
3 admitted herein, the Defendants deny each and every allegation of Plaintiff’s Complaint and each
4 paragraph therein. To the extent that any allegation contained in Plaintiff’s Complaint remains
5 unanswered, the Defendants deny such allegation. The numbered paragraphs of this Answer
6 correspond to the numbered paragraphs of the Complaint.

7 1. The allegations in the first sentence of paragraph 1 constitute Plaintiff’s
8 characterization of its case and the nature of the action, to which no response is required. To the
9 extent a response is required, the Defendants admit that the National Nuclear Security
10 Administration (“NNSA”) is a semi-autonomous agency within the Department of Energy
11 (“DOE”) and is subject to the National Environmental Policy Act 42, U.S.C. §§ 4321 *et seq.*
12 (“NEPA”), the Council of Environmental Quality’s implementing regulations at 40 C.F.R. §§
13 1500 *et seq.*, and DOE’s implementing regulations at 10 C.F.R. §§1021, but otherwise deny the
14 allegations. The allegations in the second sentence of paragraph 1 constitute Plaintiff’s
15 characterization of its case and the nature of the action, to which no response is required. To the
16 extent a response is required, the Defendants admit that the NNSA issued its Supplemental
17 Analysis for the Removal of One Metric Ton of Plutonium from the State of South Carolina to
18 Nevada, Texas, and New Mexico dated July 2018 (“SA”). The Defendants deny that the Final
19 Complex Programmatic Environmental Impact Statement (“EIS”) issued in 2008 is the only
20 environmental analysis supplemented by the 2018 SA. Defendants aver that the SA was a
21 supplement to and relied upon a series of previous analysis which are all referenced in the SA.
22 The third and fourth sentences of paragraph 1 purport to characterize the SA and other
23 documents, which documents speak for themselves and are the best evidence of their contents,
24 and, therefore, no response is required. To the extent a response is required, the Defendants deny
25 the allegations of the third and fourth sentences of paragraph 1.

26 2. The allegations of paragraph 2 purport to characterize the SA, which document speaks
27 for itself and is the best evidence of its contents, and, therefore, no response is required. To the
28 extent a response is required, the Defendants admit and aver: that the SA proposed to ship one

1 metric ton of plutonium from DOE's Savannah River Site in South Carolina to three potential
2 sites of which the NNSS, located approximately 90 miles northwest of the City of Las Vegas,
3 Nevada, is one; that the Defendants plan to move any plutonium staged at NNSS to the Los
4 Alamos National Laboratory (or another site) to be used in the production of new plutonium pits;
5 that all plutonium at issue in this case will be shipped and packaged in accordance with all
6 relevant laws and regulations and will be transported by the NNSA Office of Secure
7 Transportation; that the SA was prepared pursuant to DOE's NEPA regulations; and that the SA
8 determined that no additional environmental analysis was required, but otherwise deny the
9 allegations of paragraph 2.

10 3. As to the allegations in paragraph 3, the Defendants admit that plutonium is the
11 material that is the subject of the action at issue in this case and aver that the form of the
12 plutonium at issue in this case is classified. Based on this classification, the Defendants can
13 neither admit nor deny the remaining allegations in paragraph 3 and therefore deny such
14 allegations.

15 4. As to the allegations in Paragraph 4, the Defendants admit that plutonium is the
16 material that is the subject of the action at issue in this case and aver that the form of the
17 plutonium at issue in this case is classified. Based on this classification, the Defendants can
18 neither admit nor deny the remaining allegations in paragraph 4 and therefore deny such
19 allegations.

20 5. The allegations in paragraph 1 constitute Plaintiff's characterization of its case and the
21 nature of the action, to which no response is required. To the extent a response is required, the
22 allegations of paragraph 5 are denied.

23 6. The Defendants admit the allegations contained in paragraph 6.

24 7. The Defendants admit the allegations contained in paragraph 7.

25 8. The Defendants admit the allegations contained in paragraph 8.

26 9. The Defendants admit the allegations contained in paragraph 9.

27 10. The Defendants admit the allegations contained in paragraph 10.

28 11. The Defendants admit the allegations contained in paragraph 11, except aver that the

1 Administrator of the NNSA and Undersecretary for Nuclear Security is Lisa Gordon-Hagerty.

2 12. The allegations in paragraph 12 constitute legal conclusions to which no response is
3 required. To the extent a response is required, the allegations are denied.

4 13. The allegations in paragraph 13 constitute legal conclusions to which no response is
5 required. To the extent a response is required, the allegations are denied.

6 14. The allegations in paragraph 14 constitute legal conclusions to which no response is
7 required. To the extent a response is required, the allegations are denied.

8 15. The allegations in the first two sentences of paragraph 15 constitute legal conclusions
9 to which no response is required. To the extent a response is required, the allegations are denied.
10 Defendants deny the allegations in the third and fourth sentences of paragraph 15.

11 16. The Defendants deny the allegations contained in paragraph 16.

12 17. The allegations of paragraph 17 purport to characterize a legal document, which
13 document speaks for itself and is the best evidence of its contents, and, therefore, no response is
14 required. To the extent a response is required, the Defendants deny the allegations of paragraph
15 17.

16 18. The Defendants admits the allegations contained in the first sentence of paragraph
17 18. The allegations of the remaining sentences of paragraph 18 constitute legal conclusions and
18 attempt to characterize legal proceedings, for which no response is required. To the extent a
19 response is required, the Defendants deny the allegations in these sentences.

20 19. The allegations of paragraph 19 attempt to characterize a court decision and
21 constitute legal conclusions, for which no response is required. To the extent a response is
22 required, the Defendants deny the allegations in paragraph 19.

23 20. The allegations of paragraph 20 attempt to characterize a court decision and
24 constitute legal conclusions, for which no response is required. To the extent a response is
25 required, the Defendants deny the allegations in paragraph 20.

26 21. The allegations of paragraph 21 attempt to characterize legal proceedings and
27 documents, for which no response is required. To the extent a response is required, the
28 Defendants deny the allegations in paragraph 21.

1 22. The allegations of paragraph 22 attempt to characterize a court decision and
2 constitute legal conclusions, for which no response is required. To the extent a response is
3 required, the Defendants deny the allegations in paragraph 22.

4 23. The allegations of paragraph 23 constitute legal conclusions, for which no response
5 is required. To the extent a response is required, the Defendants deny the allegations in
6 paragraph 23.

7 24. The allegations of the first sentence of paragraph 24 purport to characterize the SA,
8 which document speaks for itself and is the best evidence of its contents, and, therefore, no
9 response is required. To the extent a response is required, the Defendants admit and aver that the
10 SA proposed to ship one metric ton of plutonium from DOE's Savannah River Site in South
11 Carolina to three potential sites of which the NNSS is one, but otherwise deny the allegations in
12 the first sentence of paragraph 24. The allegations in the remaining sentences of paragraph 24
13 constitute legal argument and conclusions, for which no response is required. To the extent a
14 response is required, the Defendants deny such allegations.

15 25. The allegations in paragraph 25 constitute legal argument and conclusions, for which
16 no response is required. To the extent a response is required, the Defendants deny such
17 allegations.

18 26. The allegations in paragraph 26 constitute legal argument and conclusions, for which
19 no response is required. To the extent a response is required, the Defendants deny such
20 allegations.

21 27. The allegations in paragraph 27 constitute legal argument and conclusions, and
22 attempt to characterize the SA, which speaks for itself and is the best evidence of its contents, for
23 which no response is required. To the extent a response is required, the Defendants deny such
24 allegations.

25 28. The allegations in paragraph 28 constitute legal argument and conclusions, for which
26 no response is required. To the extent a response is required, the Defendants deny such
27 allegations.

28 29. The allegations in paragraph 29 constitute legal argument and conclusions, and

1 attempt to characterize the SA, which speaks for itself and is the best evidence of its contents, for
2 which no response is required. To the extent a response is required, the Defendants deny such
3 allegations.

4 30. The allegations in paragraph 30 constitute legal argument and conclusions, and
5 attempt to characterize the SA, which speaks for itself and is the best evidence of its contents, for
6 which no response is required. To the extent a response is required, the Defendants deny such
7 allegations.

8 31. The allegations in paragraph 31 constitute legal argument and conclusions, and
9 attempt to characterize the SA, which speaks for itself and is the best evidence of its contents, for
10 which no response is required. To the extent a response is required, the Defendants deny such
11 allegations.

12 32. The allegations in paragraph 32 constitute legal argument and conclusions, and
13 attempt to characterize the SA and other documents, which documents speak for themselves and
14 are the best evidence of their contents, for which no response is required. To the extent a
15 response is required, the Defendants deny such allegations.

16 33. The allegations in paragraph 33 constitute legal argument and conclusions, and
17 attempt to characterize the SA and other documents, which documents speak for themselves and
18 are the best evidence of their contents, for which no response is required. To the extent a
19 response is required, the Defendants deny such allegations.

20 34. The allegations in paragraph 34 constitute legal argument and conclusions, and
21 attempt to characterize the SA and other documents, which documents speak for themselves and
22 are the best evidence of their contents, for which no response is required. To the extent a
23 response is required, the Defendants deny such allegations.

24 35. The allegations in paragraph 35 constitute legal argument and conclusions, and
25 attempt to characterize the SA and other documents, which documents speak for themselves and
26 are the best evidence of their contents, for which no response is required. To the extent a
27 response is required, the Defendants deny such allegations.

28 36. The allegations in paragraph 36 constitute legal argument and conclusions, and

1 attempt to characterize the SA and other documents, which documents speak for themselves and
2 are the best evidence of their contents, for which no response is required. To the extent a
3 response is required, the Defendants deny such allegations.

4 37. The allegations in paragraph 37 constitute legal argument and conclusions, and
5 attempt to characterize the SA and other documents, which documents speak for themselves and
6 are the best evidence of their contents, for which no response is required. To the extent a
7 response is required, the Defendants deny such allegations.

8 38. The allegations in paragraph 38 constitute legal argument and conclusions, for which
9 no response is required. To the extent a response is required, the Defendants deny such
10 allegations.

11 39. The allegations in the first two sentences of paragraph 39 constitute legal argument
12 and conclusions, for which no response is required. To the extent a response is required, the
13 Defendants deny such allegations. The Defendants admit the allegations in the third through
14 sixth sentences of paragraph 39. The Defendants deny the allegations in the seventh sentence of
15 paragraph 39.

16 40. The Defendants deny the allegations in the first two sentences of paragraph 40. The
17 allegations in the third sentence of paragraph 40 purport to characterize a federal statute, which
18 statute speaks for itself and is the best evidence of its contents, and, therefore, no response is
19 required. The allegations in the fourth, fifth and sixth sentences of paragraph 40 constitute legal
20 argument and conclusions, for which no response is required. To the extent a response is
21 required, the Defendants deny such allegations.

22 As to the seventh sentence of paragraph 40 (the first sentence in the second indented
23 paragraph of numbered paragraph 40), the Defendants admit that there have been information
24 exchanges between DOE and Nevada regarding the action underlying this case, but deny that
25 such exchanges have been incomplete. Defendants admit the allegations in the eighth sentence
26 of paragraph 40. Defendants admit that on or about August 28, 2018, DOE informed Nevada
27 that the SA would be prepared to support the shipment of plutonium at issue, but deny the
28 remaining allegations of the ninth sentence of paragraph 40. Defendants admit the allegations in

1 the tenth through fourteenth sentences of paragraph 40. Defendants deny the allegations in the
2 fifteenth sentence of paragraph 40, and aver that Plaintiff was informed that the form of
3 plutonium could not be provided because such information was classified.

4 41. The Defendants admit that a meeting between DOE and Nevada occurred on or about
5 October 30, 2018. The remaining allegations in paragraph 41 attempt to characterize a series of
6 letters between DOE and Nevada, which letters speak for themselves and are the best evidence of
7 their contents, and therefore, no response is required.

8 42. Defendants incorporate its answers to the preceding paragraphs.

9 43. The allegations of Paragraph 43 constitute legal argument and conclusions and,
10 therefore, no response is required. To the extent a response is required, Defendants deny such
11 allegations.

12 44. The allegations of Paragraph 44 constitute legal argument and conclusions and,
13 therefore, no response is required. To the extent a response is required, Defendants deny such
14 allegations.

15 45. The allegations of Paragraph 45 constitute legal argument and conclusions and,
16 therefore, no response is required. To the extent a response is required, Defendants deny such
17 allegations.

18 The remaining allegations of the Complaint constitute Plaintiff's request for relief, to
19 which no response is required.

20 **DEFENSES**

21 **FIRST DEFENSE**

22 All or part of the Complaint is moot and not justiciable.

23 **SECOND DEFENSE**

24 Plaintiff lacks standing to assert all or some of the claims made in the Complaint.

25 **THIRD DEFENSE**

26 The Complaint lacks subject matter jurisdiction due to Plaintiff's failure to allege a
27 justiciable case or controversy between the parties as to all or some of the claims.

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PRAYER FOR RELIEF

The Defendants request that this Court:

1. Deny Plaintiff the relief it seeks;
2. Dismiss the Complaint with prejudice;
3. Award Defendants their costs and attorney fees to the extent provided by law; and
4. Award Defendants such other relief as is just and equitable.

Respectfully submitted, February 2, 2019

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United States Department of Justice
Deputy Assistant Attorney General

/s/ David L. Negri
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that a copy of the foregoing document was electronically filed on
3 February 2, 2019, with the Clerk of the Court and served using the CM/ECF system upon the
4 following parties/attorneys of record:

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