

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

RALLS CORPORATION,)
318 Cooper Circle)
Peachtree City, GA 30269,)
)
<i>Plaintiff,</i>)
v.)
)
BARACK H. OBAMA,)
in his official capacity as)
President of the United States,)
1600 Pennsylvania Avenue, N.W.)
Washington, D.C. 20500,)
)
COMMITTEE ON FOREIGN)
INVESTMENT IN THE UNITED STATES,)
1500 Pennsylvania Avenue, N.W.)
Washington, D.C. 20220,)
)
and)
)
TIMOTHY F. GEITHNER,)
in his official capacity as)
Secretary of the Treasury and)
Chairperson of the Committee on)
Foreign Investment in the United States,)
1500 Pennsylvania Avenue, N.W.)
Washington, D.C. 20220,)
)
<i>Defendants.</i>)
)

Case No. 1:12-cv-01513-ABJ

AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff, Ralls Corporation, by and through its undersigned attorneys, alleges as follows:

INTRODUCTION

1. This is a civil action challenging the issuance of an order by the Committee on Foreign Investment in the United States (“CFIUS”) as violating the Administrative Procedure Act and the United States Constitution, and the issuance of an order by President Barack H.

Obama as violating Section 721 of the Defense Production Act of 1950, as amended, 50 U.S.C. app. § 2170 (“Section 721”), and the United States Constitution.

2. CFIUS is an interagency committee established under Section 721. Its purpose is to review and investigate transactions that could result in the control of a U.S. business by a foreign person in order to determine the effect of such transactions on the national security of the United States.

3. CFIUS’s powers under Section 721 and related executive orders and regulations are limited. It may only review and investigate certain “covered transactions” that could result in foreign control of a person engaged in interstate commerce in the United States. It may not bar a covered transaction from taking place. And, like all agencies, it may not arbitrarily or capriciously render determinations absent any evidence or explanation or by unexpectedly and inexplicably abandoning a prior position or policy, and it may not engage in the unconstitutional deprivation of property absent due process or the unconstitutional violation of the right to equal protection of the law.

4. The President’s powers under Section 721 and related executive orders and regulations are likewise limited. Congress has conferred upon the President only the power to “suspend or prohibit” a “covered transaction.” And, of course, the President may not engage in the unconstitutional deprivation of property absent due process or the unconstitutional violation of the right to equal protection of the law.

5. In March 2012, plaintiff Ralls Corporation, a Delaware corporation owned by two Chinese nationals, purchased four small Oregon limited liability companies, each of which owned assets consisting solely of the rights and permits necessary to build a five-turbine windfarm in north-central Oregon. Ralls is in the business of identifying U.S. opportunities for

the construction of windfarms in which the wind turbines of Sany Electric, its affiliate, can be used and their quality and reliability demonstrated to the U.S. wind industry in comparison to competitor products. The four small Oregon companies represented an ideal opportunity for Ralls to construct Sany turbines because the region in which the turbines would be located is home to hundreds of wind turbines, thereby allowing for direct and immediate comparison of Sany turbines to competitor turbines. At the same time, the projects would create clean, renewable energy and provide jobs to American workers.

6. Despite the mundane—if not laudable—purpose and effect of Ralls’s acquisition and development of the four small windfarms, the federal government has decreed that Ralls’s acquisition is prohibited and that Ralls is subject to extraordinary restrictions because the acquisition purportedly poses a risk to the national security of the United States.

7. In August 2012, declaring that “[t]here are national security risks” that “arise as a result of” the transaction—but identifying no evidence and providing no explanation—CFIUS issued an order that required Ralls immediately to cease all construction and remove all items from the relevant properties, prohibited Ralls from having any access to the properties, restricted Ralls from selling any Sany turbines to third parties for future use at the properties, and forbade Ralls from selling the properties until all items had been removed, CFIUS was notified of the buyer, and CFIUS did not object to the buyer. CFIUS asserted that these obligations were enforceable via injunctive relief, civil penalties, and criminal penalties.

8. In September 2012, the President issued an even broader order. Claiming that “[t]here is credible evidence” that Ralls and its affiliates “might” take action that “threatens to impair” national security—but identifying no evidence and providing no explanation beyond this string of suppositions—the President prohibited the acquisition outright, required Ralls to divest

the four windfarm companies, imposed the onerous restrictions listed in the CFIUS order, and authorized CFIUS to require Ralls and its affiliates to agree to government searches of its premises, documents, equipment, and software anywhere within the United States and to allow the government to interview its officers, employees, and agents.

9. At no time has Ralls ever had any opportunity to view, review, respond to, or rebut any evidence that CFIUS, the President, or any person or entity acting on their behalf has obtained, reviewed, or relied upon in reviewing the transaction in question, concluding that the transaction raises national security concerns, issuing the aforementioned orders, and imposing the foregoing extraordinary prohibitions and restrictions.

10. In issuing their respective orders, CFIUS and the President acted in an unlawful and unauthorized manner. By exceeding the powers granted to it in Section 721 and failing to provide any evidence or reasoned explanation for its decision, CFIUS violated the Administrative Procedure Act. By imposing restrictions far beyond the limited scope of the powers specifically granted to him in Section 721, the President has committed *ultra vires* acts in violation of the law. By failing to provide Ralls with sufficient notice and opportunity to be heard prior to prohibiting its acquisition of the windfarms and imposing extraordinary restrictions on the use and enjoyment of its property interests, CFIUS and the President have unconstitutionally deprived Ralls of its property absent due process. And by unfairly and unjustly singling out Ralls for differential treatment compared to similarly situated parties, CFIUS and the President have violated Ralls's right to equal protection of the law.

11. Ralls brings this action to obtain a declaration that the conduct of CFIUS and the President was unlawful and unauthorized and to enjoin enforcement of the President's order.

JURISDICTION AND VENUE

12. This Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 2201.

13. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and (e).

PARTIES

14. Plaintiff Ralls Corporation (“Ralls”) is a Delaware corporation that is privately owned by two Chinese nationals, Messrs. Dawei Duan and Jialiang Wu. Mr. Duan is the CFO of the Sany Group (“Sany”), a Chinese global manufacturing company. Mr. Wu is a Vice President of Sany and also the General Manager of Sany Electric Company, Ltd. (“Sany Electric”), a wholly-owned Chinese subsidiary of Sany.

15. Defendant Barack H. Obama is the President of the United States and is sued in his official capacity.

16. Defendant CFIUS is a “multi agency committee” established pursuant to Section 721 and Executive Order No. 11858 (May 7, 1975) in order to “carry out” Section 721. 50 U.S.C. app. § 2170(k)(1).

17. Defendant Timothy F. Geithner, the Secretary of the Treasury, is the Chairperson of CFIUS. Section 721 provides that the Secretary of the Treasury “shall serve as the chairperson” of CFIUS. *Id.* § 2170(k)(3). Mr. Geithner is sued in his official capacity.

FACTS

I. STATUTORY AND REGULATORY BACKGROUND

18. CFIUS is an interagency committee that reviews transactions that could result in the control of a U.S. business by a foreign person in order to determine the effect of such transactions on the national security of the United States.

19. CFIUS’s authority derives from Section 721, *see* 50 U.S.C. app. § 2170(k),

regulations promulgated pursuant to Section 721, *see* 31 C.F.R. §§ 800 *et seq.*, and Executive Order 11858 (May 7, 1975), as amended by Executive Order 13456 (Jan. 23, 2008).

20. The Secretary of the Treasury serves as Chairperson of CFIUS and is also a member. The other members of CFIUS are the heads of the following eight departments and offices: Department of Justice, Department of Homeland Security, Department of Commerce, Department of Defense, Department of State, Department of Energy, Office of the U.S. Trade Representative, and Office of Science and Technology Policy. The Director of National Intelligence and the Secretary of Labor are non-voting members of CFIUS. Additionally, the following five offices observe and sometimes participate in CFIUS's activities: Office of Management and Budget, Council of Economic Advisors, National Security Council, National Economic Council, and Homeland Security Council.

21. Section 721 authorizes CFIUS to “review” and “investigat[e]” a “covered transaction” to determine its effects on national security. 50 U.S.C. app. § 2170(b)(1)(A)(i), (2)(A).

22. Section 721 defines “covered transaction” as “any merger, acquisition, or takeover ... by or with any foreign person which could result in foreign control of any person engaged in interstate commerce in the United States.” *Id.* § 2170(a)(3).

23. The CFIUS process begins when parties to a proposed or pending covered transaction jointly file a voluntary notice with CFIUS or when CFIUS decides to review a covered transaction *sua sponte*. *See id.* § 2170(b)(1)(C), (D).

24. If the parties file a voluntary notice, the voluntary notice must include the information required by 31 C.F.R. § 800.402, including “a summary setting forth the essentials of the transaction” and information about the parties involved. The notice must also include

detailed information about foreign persons and foreign governments involved in the transaction.

25. Upon receiving the voluntary notice, CFIUS “shall review the covered transaction to determine the effects of the transaction on the national security of the United States.” 50 U.S.C. app. § 2170(b)(1)(A)(i). In so doing, CFIUS “shall consider” eleven factors specified in subsection (f) of Section 721. *Id.* § 2170(b)(1)(A)(ii), (f). This review “shall be completed before the end of the 30-day period beginning on the date of the acceptance of” the voluntary notice. *Id.* § 2170(b)(1)(E).

26. During the 30-day review period, CFIUS may request additional information from the parties, and the parties must provide the requested information within three business days. *See* 31 C.F.R. § 800.403(a)(3).

27. CFIUS may “negotiate, enter into or impose, and enforce any agreement or condition with any party to the covered transaction in order to mitigate any threat to the national security of the United States that arises as a result of the covered transaction.” 50 U.S.C. app. § 2170(l)(1)(A).

28. In addition to reviewing covered transactions, CFIUS “shall” also “conduct an investigation of the effects of a covered transaction on the national security of the United States” if its initial 30-day review results in a determination that (1) the transaction is a “foreign government-controlled transaction”; (2) the transaction “threatens to impair the national security of the United States and that threat has not been mitigated during or prior to” the initial 30-day review; or (3) the transaction “would result in control of any critical infrastructure of or within the United States by or on behalf of any foreign person,” if CFIUS “determines that the transaction could impair national security, and that such impairment to national security has not been mitigated by assurances provided or renewed with” CFIUS’s approval. *Id.* § 2170(b)(2); 31

C.F.R. § 800.503.

29. Any such investigation must begin no later than the end of the initial 30-day review period, and must be completed no later than 45 days after its commencement. 50 U.S.C. app. § 2170(b)(2)(C); 31 C.F.R. 800.505(a).

30. Upon completion of an investigation, under three circumstances, CFIUS “shall send a report to the President requesting the President’s decision”: (1) it “recommends that the President suspend or prohibit the transaction”; (2) it is “unable to reach a decision on whether to recommend that the President suspend or prohibit the transaction”; or (3) it “requests that the President make a determination with regard to the transaction.” 31 C.F.R. § 800.506(b); *see also* Executive Order 11858 (same).

31. Section 721(d)(1) provides that the President “may take such action for such time as the President considers appropriate to suspend or prohibit any covered transaction that threatens to impair the national security of the United States.” *Id.* § 2170(d)(1). The President may also direct the Attorney General to “seek appropriate relief, including divestment relief, in the district courts of the United States, in order to implement and enforce” his determination. *Id.* § 2170(d)(3). Neither Section 721, the implementing regulations, nor any Executive Order grants the President any other power.

32. The President may “exercise the authority conferred” by Section 721(d)(1)—*i.e.*, his authority to “suspend or prohibit any covered transaction”—only if he finds that (1) there is credible evidence that leads him to believe that the foreign interest exercising control might take action that threatens to impair the national security, and (2) existing provisions of law, other than Section 721 and the International Emergency Economic Powers Act, do not, in his judgment, provide adequate and appropriate authority for the President to protect the national security. *Id.*

§ 7120(d)(4).

33. In determining whether to exercise his statutorily conferred authority, the President “shall consider” the same eleven factors CFIUS is required to consider. *Id.* § 2170(d)(5), (f).

34. The President “shall announce [his] decision on whether or not to take action ... not later than 15 days after the date on which an investigation ... is completed.” *Id.* § 2170(d)(2).

II. THE TERNA-RALLS TRANSACTION

A. The Butter Creek Projects

35. In 2009, Oregon Windfarms, LLC, an Oregon limited liability company owned by U.S. citizens, created four Oregon limited liability companies for the purpose of holding assets related to four separate windfarm projects in Oregon.

36. Specifically, Oregon Windfarms created Pine City Windfarm, LLC; Mule Hollow Windfarm, LLC; High Plateau Windfarm, LLC; and Lower Ridge Windfarm, LLC (collectively, the “Project Companies”). Each Project Company corresponded to the development of a particular windfarm project: Pine City, Mule Hollow, High Plateau, and Lower Ridge. Collectively, these projects are known as the “Butter Creek Projects.” Each windfarm was to have five separate wind turbines.

37. Each of the four Project Companies soon held the following assets, each related to the development of a windfarm: easements with local landowners to access their property and construct windfarm turbines; power purchase agreements with the local utility, PacifiCorp; generator interconnection agreements permitting connection to PacifiCorp’s grid; transmission interconnection agreements and agreements for the management and use of shared facilities with

other nearby windfarms; and necessary government permits and approvals to construct five windfarm turbines at specific, approved locations.

38. In 2010 and 2011, the Federal Aviation Administration (“FAA”) issued a “Determination of No Hazard” for each of the twenty planned turbines in the Butter Creek Projects. Each “Determination of No Hazard” corresponds to a particular location for each planned turbine. A developer is not permitted to build a turbine in a location that has not received a “Determination of No Hazard.” A “Determination of No Hazard” is tantamount to FAA approval.

39. The FAA’s review process for issuing a “Determination of No Hazard” includes review by the Department of Defense. The purpose of the Department of Defense review is to “prevent, minimize, or mitigate adverse impacts on military operations, readiness and testing.” Mission Statement of the DOD Siting Clearinghouse, Office of the Deputy Under Secretary of Defense, Installations and Environment.

40. The United States Navy maintains a restricted airspace and bombing zone in the general vicinity of the Butter Creek Projects. The locations of the restricted airspace and bombing zone are available from county assessor maps and aeronautical navigation maps providing such information. On the attached Exhibit 1, a map to scale of the pertinent geographic region, the restricted airspace is labeled and indicated by bold red lines; the bombing zone is labeled and indicated by a purple line.

41. The restricted airspace and bombing zone are used by military aircraft based out of Naval Air Station Whidbey Island, which is located over 200 miles northwest of the restricted airspace (50 miles north of Seattle, Washington). The restricted airspace encompasses the property of numerous private landowners, and at least several highways, including Interstates 82

and 84 and U.S. 30, run through the restricted airspace.

42. Three of the four Butter Creek Projects—Mule Hollow, Upper Plateau, and Pine City—are located outside the Navy’s restricted airspace. Their approximate distances from the restricted airspace, as measured from the closest turbine in the project to the restricted airspace, are as follows:

- Mule Hollow: 1.4 miles
- Upper Plateau: 3.4 miles
- Pine City: 6.7 miles

These projects are labeled and indicated in blue on Exhibit 1; the numbers in parentheses denote the number of turbines in each windfarm and, where applicable, the distance of each windfarm from the restricted airspace, as measured from the closest turbine in the project to the restricted airspace.

43. One Butter Creek Project, Lower Ridge, is located within the restricted airspace. This project is also labeled and indicated in blue on Exhibit 1. As with the other Butter Creek Projects, the FAA, incorporating review by the Department of Defense, provided “Determinations of No Hazard” as to each of the five planned turbines in the Lower Ridge windfarm.

B. Other Nearby Windfarms

44. Oregon Windfarms has developed nine other windfarm projects in the vicinity of the Butter Creek Projects. These projects are collectively known as the “Echo Projects.” The nine projects, with the number of turbines indicated in parentheses, are: Four Corners (5), Oregon Trail (6), Butter Creek (3), Ward Butte (4), Big Top (1), Wagon Trail (2), Four Mile Canyon (5), Pacific Canyon (5), and Sand Ranch (6).

45. Development of all of the Echo Projects has been completed, and all Echo

Projects are in commercial operation.

46. All of the Echo Project windfarms use foreign-made turbines. Specifically, Four Corners and Four Mile Canyon use turbines made by REpower, a German company owned by an Indian conglomerate. The remaining windfarms use turbines made by Vestas, a Danish company.

47. Two of the Echo Project windfarms include turbines located inside the restricted airspace. Specifically, all five turbines of the Four Corners windfarm, and two turbines of the Oregon Trail windfarm, are located inside the restricted airspace.

48. Thus, seven foreign-made turbines currently in operation lie inside the restricted airspace. The five Four Corners turbines are made by REpower, a German company owned by an Indian conglomerate. The two Oregon Trail turbines are made by Vestas, a Danish company.

49. All other Echo Project windfarms are located in the general vicinity of the restricted airspace. Specifically, the approximate distances of each windfarm from the restricted airspace, as measured from the closest turbine in the project to the restricted airspace, are as follows:

- Butter Creek: 0.2 miles
- Ward Butte: 0.7 miles
- Pacific Canyon: 3.1 miles
- Big Top: 3.4 miles
- Wagon Trail: 3.5 miles
- Sand Ranch: 3.7 miles
- Four Mile Canyon: 3.9 miles

The Echo Projects are labeled and indicated in green on Exhibit 1; the numbers in parentheses denote the number of turbines in each windfarm and, where applicable, the distance of each windfarm from the restricted airspace, as measured from the closest turbine in the project to the restricted airspace.

50. One of the Echo Project windfarms, Pacific Canyon, is currently owned by foreign investors. Those same foreign investors owned the windfarm at the time of construction of the five turbines comprising the Pacific Canyon windfarm, all of which are foreign-made.

51. Oregon Windfarms has obtained FAA “Determinations of No Hazard” for 45 additional sites in the general vicinity of the Butter Creek and Echo Projects. Fifteen of these sites are inside the restricted airspace. The others range from 2.3 miles to 11.5 miles from the restricted airspace. These sites have not yet been assigned project names. Oregon Windfarms holds all the rights to these sites. These sites are indicated in red on Exhibit 1.

52. FAA “Determinations of No Hazard” have been issued for an additional eight sites in the general vicinity of the Butter Creek and Echo Projects. Oregon Windfarms is not the developer of these sites. These sites are also indicated in red on Exhibit 1.

53. The Butter Creek Projects and Echo Projects are located in or near the eastern region of the restricted airspace.

54. Hundreds of completed turbines are located in or near the western region of the restricted airspace. Specifically, FAA records indicate that 897 completed turbines are located within an eleven mile radius of the western region of the restricted airspace. These turbines are indicated in green on Exhibit 2, which is a map to scale of the larger geographic area surrounding the restricted airspace, including the area captured in Exhibit 1.

55. Five of these 897 completed turbines are located within the western region of the restricted airspace. Approximately forty completed turbines are located within one mile of the restricted airspace. *See* Exhibit 3 (map to scale of western region of restricted airspace).

56. Another seventeen planned turbines located within the western region of the restricted airspace have received FAA “Determinations of No Hazard.”

57. Upon information and belief, consistent with the proportion of foreign-made turbines and foreign-owned windfarms in or near the eastern region of the restricted airspace, dozens if not hundreds of existing turbines in or near the western region of the restricted airspace are foreign-made and foreign-owned.

C. Ralls's Acquisition and Development of the Butter Creek Projects

58. Plaintiff Ralls is in the business of identifying market opportunities throughout the United States for the development and construction of windfarms in which the wind turbines of Sany Electric, its affiliate, can be used. Through such actions, Ralls seeks to demonstrate the quality and reliability of Sany turbines to the U.S. wind industry, particularly with respect to important features like turbine run time. The Butter Creek Projects are ideal for this purpose given the existence of numerous other nearby windfarms using competitor turbines, thus providing for a direct and immediate comparison to competitor products. For that reason, Ralls decided to include the Butter Creek Projects within the portfolio of windfarm projects it intends to develop at locations throughout the United States.

59. In December 2010, Oregon Windfarms sold its interests in the Project Companies to Terna Energy USA Holding Corporation ("Terna"), a Delaware corporation owned by Terna Energy SA, a publicly traded Greek company.

60. In March 2012, Terna sold its membership interests in the Project Companies to Intelligent Wind Energy, LLC ("IWE"), a Delaware limited liability company that was owned by U.S. Innovative Renewable Energy, LLC ("USIRE"), a Delaware limited liability company owned by a U.S. citizen. USIRE then sold IWE to Ralls.

61. At the time Ralls purchased the Project Companies from Terna, the companies' assets continued to consist solely of easements with local landowners to access their property and

construct windfarm turbines; power purchase agreements with the local utility, PacifiCorp; generator interconnection agreements permitting connection to PacifiCorp's grid; transmission interconnection agreements and agreements for the management and use of shared facilities with other nearby windfarms; and necessary government permits and approvals to construct windfarm turbines at particular locations. There was no on-going business concern associated with the Project Companies; they were essentially "greenfield" development projects.

62. Shortly after Ralls acquired the Project Companies, the United States Navy expressed concerns regarding the location of the Lower Ridge windfarm, the sole Butter Creek project located within the restricted airspace.

63. The Navy advocated moving the Lower Ridge windfarm to "reduce airspace conflicts between the Lower Ridge wind turbines and low-level military aircraft training."

64. Although the Navy indicated that it had no authority to require such a move, Ralls agreed, at significant expense and effort, to move the Lower Ridge Windfarm to a new location.

65. Moving the Lower Ridge Windfarm to its new location required Ralls to obtain additional approvals from the Oregon Public Utility Commission. The Navy wrote to the Oregon Public Utility Commission on Ralls's behalf, emphasizing its concern that the placement of the wind turbines at either location "may have negative security implications" but recommending that the requested approvals issue. The Navy added that it "appreciat[ed]" Ralls's "cooperation and consideration" in agreeing to move the Lower Ridge windfarm.

66. The Navy did not express concerns to Ralls about any of the three other windfarms, all of which are located outside the restricted airspace.

67. Construction of the turbines at the Butter Creek Projects began on April 23, 2012.

68. Once completed, the Butter Creek projects will consist of four separate

windfarms—Pine City, Mule Hollow, High Plateau, and Lower Ridge—each with five turbines. Each turbine will generate 2.0 megawatts (“MW”) of power, for a total of ten MW per windfarm, or a modest 40 MW from all windfarms combined. Each windfarm will also include related systems to allow for power production and interconnection to the PacifiCorp transmission grid in the western United States under long-term contracts with PacifiCorp.

69. Neither Ralls nor the Project Companies will control or have access to PacifiCorp’s transmission grid.

70. PacifiCorp itself owns thousands of MWs of wind energy generating facilities, and nearly 10,600 MW of total generating assets. Once constructed, Ralls’s 40 MW of wind-generated power will comprise approximately 0.37% of PacifiCorp’s total generating capacity, and approximately 2.3% of its wind energy generating capacity.

71. Ralls intends to continue pursuing windfarm development opportunities in the United States and acquiring existing windfarm greenfield companies to do so, in the manner of its acquisitions of the Project Companies.

III. THE CFIUS AND PRESIDENTIAL ORDERS REGARDING THE TERNA-RALLS TRANSACTION

A. The CFIUS Orders

72. On June 28, 2012, Ralls and Terna submitted a voluntary notice to CFIUS informing CFIUS of Ralls’s recent acquisition of the Project Companies. Ralls included all of the information required by 31 C.F.R. § 800.402(c), including facts set forth above.

73. In the weeks that followed submission of the voluntary notice, CFIUS asked Ralls and Terna a number of follow-up questions, as to all of which Ralls and Terna timely provided responses.

74. Ralls was provided one opportunity to meet with CFIUS during this period; a

meeting was held on June 29, 2012. During that meeting, CFIUS did not provide or discuss with Ralls any evidence it had obtained or was reviewing in connection with any supposed national security risks purportedly raised by Ralls's acquisition of the Project Companies.

75. On July 25, 2012, CFIUS issued an Order Establishing Interim Mitigation Measures regarding the Terna-Ralls transaction on July 25, 2012 ("July Order"). *See* Ex. 4.

76. The July Order stated that CFIUS had determined that the Terna-Ralls transaction was a "covered transaction" and that "there are national security risks to the United States that arise as a result of the Transaction." *Id.* at 1.

77. The July Order stated that, as a result of the CFIUS determination, the "Companies," which the July Order defined as Ralls and the Project Companies:

- "Shall immediately cease all Construction and Operations, and shall not undertake any further Construction and Operations, at the Properties" (defined as any of the sites on which the Project Companies proposed to construct windfarms);
- "Shall remove all stockpiled or stored items from the Properties no later than July 30, 2012, and shall not deposit, stockpile, or store any new items at the Properties"; and
- "Shall immediately cease all access, and shall not have any access, to the Properties." *Id.*

78. The July Order added that "[n]otwithstanding the foregoing, U.S. citizens contracted by the Companies and approved by CFIUS may access the site until July 30, 2012, solely for the purposes of removing any items from the Properties in compliance with" the July Order. *Id.* at 1-2.

79. As authority for its action, CFIUS cited "Section 721, and Executive Order 11858 of May 7, 1975, as amended by Executive Order 13456, 73 Fed. Reg. 4677 (Jan. 23, 2008)." *Id.* at 1. CFIUS cited no other authority for its action.

80. The July Order provided that it "is enforceable, through injunctive relief, criminal

or civil penalty, or otherwise, pursuant to section 721, the Executive Order, the CFIUS regulations, 18 U.S.C. § 1001, or any other applicable law.” *Id.* at 2.

81. In compliance with the July Order, Ralls immediately suspended construction at the windfarms. By that point, Ralls had completed installation of all five turbine foundations at the Upper Plateau windfarm, had partially installed all five turbine foundations at the Pine City windfarm, and had partially installed two turbine foundations at the Lower Ridge windfarm. All foundations were designed and installed to fit Sany turbines.

82. On July 26, 2012, in a good-faith effort to address CFIUS’s concerns, Ralls informed CFIUS that it was considering selling the Project Companies, with several American buyers having expressed interest. Ralls believed that a sale of the Project Companies would address CFIUS’s concerns in issuing the July Order, and it requested CFIUS’s guidance on the matter. On July 31, 2012, Ralls informed CFIUS that it intended to complete transfer of the Project Companies to a U.S. buyer as early as the end of that week.

83. After being advised of Ralls’s good-faith effort, on August 2, 2012, CFIUS issued an Amended Order Establishing Interim Mitigation Measures (the “August Order”). *See Ex. 5.*

84. The August Order expanded the definition of “Companies” to include the Project Companies, Ralls and its subsidiaries, and the Sany Group (including Sany Electric and Sany Heavy Industries). *Id.* at 1.

85. The August Order also added more prohibitions to the previous Order, stating that in addition to the prior prohibitions, the Companies:

- “[S]hall not deposit, stockpile, or store any new items at the Properties, any lay down site identified by the Companies in any information or communication submitted to CFIUS, or at any location that is closer to the R-5701 Restricted Airspace than the lay down site that is farthest from the R-5701 Restricted Airspace”;
- “Shall not sell or otherwise transfer or propose, or otherwise facilitate the sale

or transfer to any third party for use or installation at the Properties of any items made or otherwise produced by the Sany Group”; and

- “Shall not complete a sale or transfer of the Project Companies or their assets to any third party until: (i) All items deposited, installed, or affixed (including concrete foundations) on the Properties subsequent to the acquisition by Ralls of the Project Companies have been removed from the Properties; (ii) the Companies notify CFIUS of the intended recipient or buyer; and (iii) the Companies have not received an objection from CFIUS within 10 business days of notification.” *Id.* at 2.

86. As with the previous July Order, the August Order cited as authority for its directives “Section 721, and Executive Order 11858 of May 7, 1975, as amended by Executive Order 13456, 73 Fed. Reg. 4677 (Jan. 23, 2008).” *Id.* at 1. As before, the August Order cited no other authority for its directives.

87. Also as with the previous July Order, the August Order provided that it “is enforceable, through injunctive relief, criminal or civil penalty, or otherwise, pursuant to section 721, the Executive Order, the CFIUS regulations, 18 U.S.C. § 1001, or any other applicable law.” *Id.* at 3.

88. At no point has CFIUS ever provided or discussed with Ralls any evidence it obtained or reviewed in connection with the supposed national security risks raised by Ralls’s acquisition of the four windfarms. Nor has Ralls had any opportunity to review or rebut such evidence, the conclusions CFIUS has drawn from that evidence (aside from its general conclusion regarding supposed “national security risks”), or the reasoning CFIUS has used to reach such conclusions.

89. On July 30, 2012, pursuant to Section 721(b)(2), CFIUS commenced an investigation of the Terna-Ralls transaction.

90. On September 13, 2012, at the end of the 45-day investigation phase, CFIUS transmitted a report to the President describing CFIUS’s assessment of the purported risks to

national security posed by the transaction. Ralls has never seen this report, nor has it had any opportunity to rebut its allegations or the supposed facts on which its conclusions are premised.

B. The Presidential Order

91. On September 28, 2012, President Barack H. Obama issued an order entitled, “Order Regarding the Acquisition of Four U.S. Wind Farm Project Companies by Ralls Corporation” (the “September Order”). *See* Ex. 6.

92. In Section 1 of the September Order, entitled “Findings,” the President identified the Sany Group as “a Chinese company affiliated with Ralls” and Messrs. Duan and Wu as “citizens of the People’s Republic of China and senior executives of the Sany Group, who together own Ralls.” He defined Ralls and the Sany Group (including Sany Electric and Sany Heavy Industries) as the “Companies.” *Id.* § 1(a).

93. The President then stated that “[t]here is credible evidence” that “leads [him] to believe” that Ralls, Sany, and Messrs. Duan and Wu, “through exercising control of” the Project Companies, “might take action” that “threatens to impair the national security of the United States.” *Id.* The President further stated that “[p]rovisions of law,” aside from Section 721 and the International Emergency Economic Powers Act, “do not ... provide adequate and appropriate authority for [the President] to protect the national security in this matter.” *Id.* § 1(b). The Order provided no further findings.

94. In Section 2 of the September Order, entitled “Actions Ordered and Authorized,” the President ordered a litany of actions to be taken against the Companies and Messrs. Duan and Wu.

95. The President ordered that “[t]he transaction resulting in the acquisition of the Project Companies and their assets by the Companies or Mr. Wu or Mr. Duan is hereby

prohibited,” as was “ownership by the Companies or Mr. Wu or Mr. Duan of any interest in the Project Companies and their assets, whether directly or indirectly.” Ex. 6 § 2(a). To “effectuate this order,” the President ordered Ralls to divest “all interests” in (i) the Project Companies; (ii) the Project Companies’ “assets, intellectual property, technology, personnel, and customer contracts”; and (iii) “any operations developed, held, or controlled ... by the Project Companies at the time of, or since, their acquisition.” *Id.* § 2(b). Such divestment is required to occur not later than 90 days of the order’s issuance. *Id.*

96. In addition to prohibiting Ralls’s acquisition of the Project Companies, the President ordered that the Companies:

- “shall ... remove from the properties ... all items, structures, or other physical objects or installations of any kind (including concrete foundations) that the Companies or persons on behalf of the Companies have stockpiled, stored, deposited, installed, or affixed thereon,” within 14 days of the order’s issuance, *id.* § 2(c);
- “shall cease all access, and will not have any access, to the Properties,” except for U.S. citizens contracted by the Companies and approved by CFIUS who could access the properties “solely for the purposes of” removing items, *id.* § 2(d);
- “shall not sell or otherwise transfer, or propose to sell or otherwise transfer, or otherwise facilitate the transfer of, any items made or otherwise produced by the Sany Group to any third party for use or installation at the Properties,” *id.* § 2(e); and
- “shall not complete a sale or transfer of the Project Companies or their assets to any third party until: (i) all items, structures, or other physical objects or installations of any kind (including concrete foundations) that the Companies or persons on behalf of the Companies have stockpiled, stored, deposited, installed, or affixed on the Properties have been removed from the Properties and the Department of Defense has notified the Companies that it has verified the Companies’ certification of such removal ... (ii) Ralls notifies CFIUS in writing of the intended recipient or buyer; and (iii) Ralls has not received a provisional or final objection from CFIUS to the intended recipient or buyer within 10 business days of the [preceding] notification,” *id.* § 2(f).

97. Finally, the President also ordered that “until such time as the divestment is completed,” CFIUS is “authorized to implement measures it deems necessary and appropriate to

verify that operations of the Project Companies are carried out in such a manner as to ensure protection of the national security interests of the United States.” *Id.* § 2(h). Such measures “include but are not limited” to requiring the Companies and the Project Companies to permit government employees to “access ... all premises and facilities of the Project Companies and the Companies located in the United States” so as to:

- “inspect and copy any books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the Companies or the Project Companies that concern any matter relating to this order”;
- “inspect any equipment and technical data (including software) in the possession or under the control of the Companies or the Project Companies”; and
- “interview officers, employees, or agents of the Companies or the Project Companies concerning any matter relating to this order.” *Id.*

98. The President further provided in the September Order that “[t]he Attorney General is authorized to take any steps necessary to enforce this order.” *Id.* § 2(i).

99. The President also stated that CFIUS’s previous July Order and August Order “are hereby revoked.” *Id.* § 3.

100. At no point between September 13, 2012—the date CFIUS transmitted its report to the President—and September 28, 2012—the date the President issued the September Order—did CFIUS, the President, or any person or entity acting on behalf of CFIUS or the President provide or discuss with Ralls any evidence that CFIUS, the President, or any person or entity acting on their behalf obtained or reviewed in connection with the supposed national security risks that Ralls’s acquisition of the four windfarms purportedly raises. In addition, Ralls had no opportunity during that period to review or rebut any such evidence.

101. At no point has Ralls ever had any opportunity to view, review, respond to, or rebut the “credible evidence” identified in the September Order that led the President to conclude

that the Companies, Mr. Duan, or Mr. Wu “might” take action that “threatens to impair” the national security of the United States.

102. At no point since voluntarily filing its notice of the Terna-Ralls transaction with CFIUS on June 28, 2012, has Ralls ever had any opportunity to view, review, respond to, or rebut any evidence obtained or reviewed by any individual or entity acting on behalf of the federal government concerning supposed “national security risks” raised by Ralls’s acquisition of the four windfarms. At no point has Ralls had any opportunity to view, review, respond to, or rebut any reasoning offered by the federal government for its actions or the conclusions reached by the federal government, aside from the government’s general, vague, and unsupported determination that the acquisition raises “national security risks.”

103. Ralls emphatically denies that its acquisition of the Project Companies was intended to or will have or raise any risks or threats regarding the national security of the United States, and it denies that any credible evidence of such intent or effect exists. The sole purpose and effect of Ralls’s acquisition of the Project Companies was to provide a means for the demonstration of Sany turbines as superior in quality and reliability to competitor products, particularly with respect to important features like turbine run time. The Butter Creek Projects are ideal for this purpose given the existence of numerous other nearby windfarms using competitor turbines, thus providing for a direct and immediate comparison to competitor products. In so doing, Ralls also intended to provide an economically viable commercial project that provides clean, renewable energy for the American market and creates jobs for American workers in support of the American economy. The unlawful and unauthorized actions of the federal government eviscerate these innocuous—indeed, laudable—goals.

COUNT I
(Against Defendants CFIUS and Timothy F. Geithner)
(Violation of the Administrative Procedure Act—Exceeding Statutory
Authority by Prohibiting Transaction and Regulating Future Transactions)

104. Plaintiff realleges and incorporates by reference the allegations contained in all of the preceding paragraphs.

105. The Declaratory Judgment Act provides that, in a case of actual controversy within its jurisdiction, a United States court may declare the rights and other legal relations of any interested party seeking such declaration. 28 U.S.C. § 2201(a).

106. The Administrative Procedure Act (“APA”) provides that “[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.” 5 U.S.C. § 702.

107. The APA also provides that “final agency action for which there is no other adequate remedy in a court” is “subject to judicial review.” *Id.* § 704.

108. The APA further provides that a reviewing court shall “hold unlawful and set aside agency action, findings, and conclusions” found to be, *inter alia*, “(A) arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; [or] (D) without observance of procedure required by law.” *Id.* § 706(2).

109. CFIUS constitutes an “agency” whose final actions are reviewable under the APA.

110. The August Order constitutes “final agency action” that is subject to judicial review. CFIUS consummated its decisionmaking process by determining that the Terna-Ralls transaction is a “covered transaction,” that there are national security risks to the United States

that arise as a result of the transaction, and that severe, prohibitive, and immediate restrictions are necessary to prevent these purported national security risks. Furthermore, the August Order determined Ralls's rights and obligations, and legal consequences flow from the August Order: it expressly provided for its enforcement in court, and violating its terms could have exposed Ralls to significant penalties.

111. Ralls suffered legal wrong as a result of the August Order because CFIUS lacked statutory authority to prohibit the Terna-Ralls transaction, versus proposing measures that mitigate any national security risks.

112. CFIUS's powers under Section 721 are limited; it may only "negotiate, enter into or impose, and enforce" an agreement or condition "in order to mitigate any threat to the national security of the United States that arises as a result of the covered transaction." *Id.* § 2170(l)(1)(A).

113. By ordering Ralls immediately to cease all construction at the project sites, remove all equipment from the sites, and cease all access to the sites (including communications with persons at the sites), CFIUS in the August Order did not merely mitigate any national security risks associated with the transaction; its actions were tantamount to prohibiting the transaction entirely, a power CFIUS does not possess under statute or regulation.

114. Section 721 purports to provide only the President with the extraordinary authority to suspend or prohibit a transaction, not CFIUS. By issuing the August Order, CFIUS improperly arrogated this extraordinary power to itself.

115. CFIUS also exceeded its statutory authority by purporting to restrict transactions not within its purview. Section 1(d) of the August Order barred Ralls from "sell[ing] or otherwise transfer[ring] ... to any third party for use or installation at" the windfarms "any items

made or otherwise produced by the Sany Group.” Ex. C, at 2. Under Section 721, however, CFIUS’s oversight is limited to transactions “by or with any foreign person which could result in foreign control of any person.” 50 U.S.C. app. § 2170(a)(3). Because future transactions in which Ralls sells or transfers “any items made or otherwise produced by the Sany Group” would not “result in foreign control of any person,” CFIUS lacks the authority to impose restrictions on (much less outright bar) such transactions.

116. Similarly, Section 1(e) of the August Order barred Ralls from “complet[ing] a sale or transfer of the Project Companies or their assets to any third party” absent CFIUS approval. Ex. C, at 2. But CFIUS lacks the authority to impose restrictions regarding the future sale or transfer of the Project Companies or their assets “to any third party.” CFIUS’s jurisdiction extends only to transactions “which could result in foreign control.”

117. The September Order issued by the President does not prevent judicial review of the lawfulness of the August Order because there is a reasonable expectation that Ralls will be subject to substantially similar CFIUS orders in the future, and the lawfulness of such orders cannot be fully litigated prior to their expiration or revocation.

118. The physical and regulatory takings of Ralls’s property interests constitute unconstitutional takings in violation of the U.S. Constitution, deprive Ralls of its property interests absent due process, and violate Ralls’s constitutional right to equal protection, or at a minimum raise grave doubts about the constitutionality of the government action, though this constitutional question is avoided by a judicial determination that CFIUS violated the APA in issuing the August Order.

119. Likewise, just as federal courts will construe statutes where possible to avoid serious doubt of their constitutionality, so too CFIUS has an obligation to exercise its powers in a

way that does not raise serious constitutional concerns. CFIUS's actions in violation of its statutory authority resulted in a constitutionally problematic prohibition that is avoided by finding CFIUS's conduct in violation of the APA.

COUNT II
(Against Defendants CFIUS and Timothy F. Geithner)
(Violation of the Administrative Procedure Act—Arbitrary
and Capricious Agency Action)

120. Plaintiff realleges and incorporates by reference the allegations contained in all of the preceding paragraphs.

121. Ralls suffered legal wrong as a result of the August Order because the August Order arbitrarily and capriciously offered no evidence or explanation for its determination that the Terna-Ralls transaction is a “covered transaction,” its determination that national security risks to the United States arise as a result of the transaction, its determination to impose prohibitive restrictions on the Terna-Ralls transaction tantamount to barring it outright, or its determination to impose categorical restrictions when less burdensome alternatives were available under existing provisions of law that adequately and appropriately protect national security.

122. The August Order instead simply recited, in a conclusory manner, that Ralls's acquisition of the Project Companies “constitutes a ‘covered transaction’ for purposes of Section 721,” and that “there are national security risks to the United States that arise as a result of the Transaction,” and imposed a list of draconian obligations.

123. This failure to provide any explanation or evidence for CFIUS's conclusions is a violation of the APA's requirement of reasoned decisionmaking, particularly given the lengthy and detailed list of factors that CFIUS must consider when determining whether a transaction could harm national security. *See* 50 U.S.C. app. § 2170(b)(1)(A)(ii), (f).

124. The August Order also constituted arbitrary and capricious action because it provided no explanation why CFIUS ignored readily available, adequate, and appropriate alternative measures short of outright prohibiting the transaction. Among such measures would have been invocation of 10 U.S.C. § 2663(d), which provides the Secretary of the Navy with authority to acquire interests in land, such as the interests in the properties on which the windfarms would be located, when the need is urgent, the acquisition is needed in the interest of national defense, and the acquisition is required to maintain the operational integrity of a military installation.

125. The August Order further constituted arbitrary and capricious action because it prohibitively restricted Ralls's acquisition of the Project Companies after the federal government previously assented to the transaction. Prior to Ralls's acquisition, the FAA provided "Determinations of No Hazard" (which included Department of Defense review), and shortly after Ralls's acquisition, the Navy objected to the location of one windfarm (and stated no objections concerning the other three) but assented after Ralls relocated it at its own cost. The August Order rescinded the Navy's prior assent and invalidated the FAA's prior approval, without offering any explanation for this sudden shift in course.

126. The August Order was further arbitrary and capricious in prohibiting Ralls's future sale of "any items made or otherwise produced by the Sany Group" that would be used at the properties and in prohibiting Ralls's future sale of the Project Companies or their assets to any third party absent CFIUS approval. These restrictions and remedies concerning future transactions were entirely unrelated to CFIUS's limited power to review covered transactions and mitigate purported national security risks.

127. The September Order issued by the President does not prevent judicial review of

the lawfulness of the August Order because there is a reasonable expectation that Ralls will be subject to substantially similar CFIUS orders in the future, and the lawfulness of such orders cannot be fully litigated prior to their expiration or revocation.

128. Moreover, because CFIUS is responsible for providing a factual analysis and recommendation for action to the President, the arbitrary and capricious nature of CFIUS's analysis, decisionmaking, and recommendation fatally infected the President's own decisionmaking, findings, and order.

129. As a result of this and all other legal wrongs wrought by the August Order, Ralls incurred significant injury. Ralls was prohibited from undertaking any further construction or operations on its property, it was required to remove all of its belongings from the property, it was unable to use the property for storage, it was prohibited from accessing the property, it was prohibited from selling or transferring the primary goods to be used in erecting the windfarms, and it was not permitted to sell or transfer the other assets of the Project Companies to any third party until all items were removed (including the concrete foundations that it has expended funds to install), the companies notified CFIUS, and CFIUS did not object. Accordingly, the August Order eviscerated Ralls's property rights, including, *inter alia*, its easements with local landowners to access their property and construct windfarm turbines; power purchase agreements with the local utility, PacifiCorp; generator interconnection agreements permitting connection to PacifiCorp's grid; transmission interconnection agreements and agreements for the management and use of shared facilities with other nearby windfarms; and necessary government permits and approvals.

130. The physical and regulatory takings of Ralls's property interests constitute unconstitutional takings in violation of the U.S. Constitution, deprive Ralls of its property

interests absent due process, and violate Ralls's constitutional right to equal protection, or at a minimum raise grave doubts about the constitutionality of the government action, though this constitutional question is avoided by a judicial determination that CFIUS violated the APA in issuing the August Order.

131. Likewise, just as federal courts will construe statutes where possible to avoid serious doubt of their constitutionality, so too CFIUS has an obligation to exercise its powers in a way that does not raise serious constitutional concerns. It is arbitrary and capricious for CFIUS to fail to consider adequate and available alternatives that would accommodate the government's security concerns without raising problems under the Constitution, and for CFIUS to give no explanation or provide any factual support for its decision to reject these alternatives in favor of a constitutionally problematic prohibition.

COUNT III
(Against All Defendants)
(*Ultra Vires* Action Facially Violating Statute and Regulations)

132. Plaintiff realleges and incorporates by reference the allegations contained in all of the preceding paragraphs.

133. In Section 721, Congress conferred upon the President limited authority. The President may only "take such action for such time as the President considers appropriate to suspend or prohibit any covered transaction." Neither any other provision of Section 721, nor the implementing regulations, nor any Executive Order grants the President any powers beyond "suspend[ing] or prohibit[ing]" a "covered transaction."

134. In the September Order, the President ordered that the "transaction resulting in the acquisition of the Project Companies and their assets" is "prohibited." To "effectuate" this order, the President ordered Ralls to divest "all interests" in the Project Companies.

135. The September Order went much further than “prohibit[ing]” the pertinent covered transaction, however. The President also ordered Ralls to remove from the relevant properties all items, including concrete foundations, and prohibited any access to the properties except to remove items. That order thus exceeds the President’s conferred authority to “suspend or prohibit” a “covered transaction.”

136. The President also prohibited Ralls from selling or transferring any items made by the Sany Group to any third party—even an American party—for use at the properties. That order not only is unrelated to “suspend[ing] or prohibit[ing]” the pertinent “covered transaction”—Ralls’s acquisition of the Project Companies—but is unrelated to any “covered transaction.” Neither Section 721 nor any regulation or Executive Order gives the President the power to dictate the terms of (much less prohibit) future transactions, particularly those that are not “covered transactions” as defined by Section 721 or those that are merely sales of individual items. That order thus exceeds the President’s conferred authority to “suspend or prohibit” a “covered transaction.”

137. The President also prohibited Ralls from selling the Project Companies or their assets to “any third party”—even an American party—until it removed all items from the properties and it obtained approval by CFIUS of the proposed buyer. Neither Section 721 nor any regulation or Executive Order gives the President the power to dictate the terms of future transactions, particularly those that are not “covered transactions” as defined by Section 721 or those that are merely sales of assets. That order thus exceeds the President’s conferred authority to “suspend or prohibit” a “covered transaction.”

138. The President also authorized CFIUS to “implement measures it deems necessary and appropriate to verify that operations of the Project Companies are carried out in such a

manner as to ensure protection of the national security interests of the United States.” Specifically, the President authorized CFIUS to require the Companies and Project Companies to allow government employees to access their premises to inspect and copy books, accounts, documents; inspect any equipment and technical data, including software; and interview officers, employees, or agents of the Companies or Project Companies, anywhere within the United States. Neither Section 721 nor any regulation or Executive Order gives the President the power to impose, directly or indirectly, future restrictions on or future oversight of the everyday business activities of entities that previously engaged in a covered transaction. That order thus exceeds the President’s power to “suspend or prohibit” a “covered transaction,” in addition to purporting to authorize searches and seizures in violation of the Fourth Amendment of the Constitution.

139. The foregoing *ultra vires* actions exceed the limited power that Congress conferred upon the President in Section 721, that the Department of the Treasury has promulgated in implementing regulations, or that even prior Executive Orders have recognized. The President’s *ultra vires* actions facially violate Section 721, related regulations, and related executive orders.

140. The President’s unlawful *ultra vires* actions have caused and will cause injury to Ralls. As a result of the President’s *ultra vires* actions, Ralls is prohibited from accessing and developing real property that it is otherwise legally entitled to access and develop; it must expend substantial sums of money to remove items from the windfarm sites, including concrete foundations; it is prohibited from selling Sany products to any future purchaser for use at the properties; it cannot freely convey the Project Companies to a third party; and it must provide government employees unfettered access to its books, documents, equipment, technical data,

software, and officers, employees, and agents anywhere within the United States.

141. The President's *ultra vires* actions are a direct and proximate cause of these injuries.

142. The foregoing *ultra vires* actions and resulting injuries will also occur if and when Defendants CFIUS or Timothy F. Geithner, or any persons acting on their behalf or on behalf of the President, implement or enforce any *ultra vires* actions of the President set forth in the September Order, as the September Order expressly contemplates.

143. Judicial review of this claim is available notwithstanding Section 721(e) because the President's *ultra vires* actions exceed the authority conferred to him by Congress and the United States Constitution.

COUNT IV
(Against All Defendants)
(Unconstitutional Deprivation of Property Without Due Process)

144. Plaintiff realleges and incorporates by reference the allegations contained in all of the preceding paragraphs.

145. The Fifth Amendment to the United States Constitution states that “[n]o person shall be ... deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V.

146. Ralls possesses numerous valid property interests and property rights by virtue of its acquisition of the Project Companies, including but not limited to the Project Companies themselves; easements with local landowners to access their property and construct windfarm turbines; power purchase agreements with the local utility, PacifiCorp; generator interconnection agreements permitting connection to PacifiCorp's grid; transmission interconnection agreements and agreements for the management and use of shared facilities with other nearby windfarms;

and necessary government permits and approvals to construct windfarm turbines at particular locations

147. CFIUS's issuance of the August Order eviscerated these property rights. The August Order required Ralls to remove all items from the properties and prohibited Ralls from physically accessing the property, undertaking any further construction or operations on the property, selling or transferring the primary goods to be used in constructing the windfarms, and selling or transferring the other assets of the Project Companies to any third party until all items are removed, the companies notify CFIUS, and CFIUS does not object.

148. The President's issuance of the even broader September Order has further eviscerated these property rights. The September Order prohibits Ralls's acquisition of the Project Companies entirely and forces Ralls to divest "all interests" in (1) the Project Companies; (2) the Project Companies' assets, intellectual property, technology, personnel, and customer contracts; and (3) any operations developed, held, or controlled, whether directly or indirectly, by the Project Companies at the time of, or since, Ralls's acquisition. Like the August Order, the September Order also requires Ralls to remove all items from the properties and prohibits Ralls from physically accessing the property, undertaking any further construction or operations on the property, selling or transferring the primary goods to be used in constructing the windfarms, and selling or transferring the other assets of the Project Companies to any third party until all items are removed, the companies notify CFIUS, and CFIUS does not object. The September Order further requires Ralls to give government employees physical access to its premises and those of the Project Companies for the purposes of inspecting documents, inspecting equipment and technical data (including software), and interviewing personnel anywhere within the United States.

149. The August Order and September Order entirely extinguish Ralls's valid property rights and property interests. As a direct and proximate result of the orders, Ralls cannot use its property for the purpose for which it was acquired; in fact, it cannot use its property for any purpose whatsoever, nor may it benefit from the various rights it has acquired. Instead, it must divest all such property, forgo all benefits of the property, and submit to invasions of its property.

150. Ralls was not afforded due process prior to the issuance of the August Order or September Order and the resulting deprivation of its property interests. At no point prior to the issuance of the August Order or September Order did CFIUS, the President, any individual or entity acting on their behalf, or any individual or entity acting on behalf of the federal government ever disclose to Ralls any of the evidence obtained or reviewed during CFIUS's or the President's review. At no point has Ralls ever had an opportunity to view, review, respond to, or rebut any evidence any such individual or entity has obtained or reviewed in reaching their determinations that Ralls's acquisition of the Project Companies raises "national security risks," nor has Ralls been given meaningful notice or hearing prior to those determinations.

151. Neither the August Order nor the September Order identifies any of the evidence upon which either CFIUS or the President relied in reaching their determinations, nor do they provide any explanation for those determinations or any opportunity for Ralls to respond to or rebut those determinations.

152. Neither order, moreover, explains why existing provisions of law do not provide adequate and appropriate authority to protect the national security, nor do they provide Ralls an opportunity to respond to or rebut the reasons why such provisions of law are purportedly insufficient.

153. The issuance of the August Order and September Order has directly and proximately deprived Ralls of its property absent due process of law, in violation of the Fifth Amendment to the U.S. Constitution.

154. The foregoing deprivation of Ralls's property absent due process will also occur if and when Defendants CFIUS or Timothy F. Geithner, or any persons acting on their behalf or on behalf of the President, implement or enforce any actions of the President set forth in the September Order, as the September Order expressly contemplates.

155. The September Order issued by the President does not prevent judicial review of the constitutionality of the August Order because there is a reasonable expectation that Ralls will be subject to substantially similar CFIUS orders in the future, and the lawfulness of such orders cannot be fully litigated prior to their expiration or revocation.

156. Judicial review of this claim is available notwithstanding Section 721(e) because the President's actions resulting in the deprivation of Ralls's property absent due process violate the United States Constitution.

COUNT V
(Against All Defendants)
(Unconstitutional Violation of Right to Equal Protection)

157. Plaintiff realleges and incorporates by reference the allegations contained in all of the preceding paragraphs.

158. The Due Process Clause of the Fifth Amendment to the United States Constitution forbids the federal government to deny equal protection of the law.

159. The constitutional guarantee of equal protection requires that persons who are similarly situated receive equal treatment from the federal government.

160. The August Order and September Order constitute unconstitutional violations of

Ralls's right to equal protection of the law because Ralls and its affiliates and executives have unfairly and unjustly been treated differently from similarly situated persons.

161. Numerous other windfarms using foreign-made turbines and with foreign ownership are located in or near the Navy's restricted airspace. At least seven foreign-made turbines are located within the restricted airspace, like one of Ralls's planned windfarms. At least thirty foreign-made turbines are located near the restricted airspace, the same distance from the restricted airspace (if not closer) than Ralls's three other planned windfarms. At least five of these foreign-made turbines are part of a windfarm (Pacific Canyon) that was foreign-owned at the time of construction and is currently foreign-owned.

162. Nearly 900 additional turbines, moreover, are located within 11 miles of the restricted airspace, like Ralls's proposed turbines. Upon information and belief, dozens if not hundreds of these turbines are foreign-made and foreign-owned.

163. The federal government has not imposed on these similarly situated turbines or windfarms, or their owners or developers—including foreign-made turbines and foreign owners or developers—any prohibitions or restrictions similar to those imposed on Ralls by the August Order and September Order. The federal government has only imposed such prohibitions and restrictions on Ralls.

164. Because the August Order and September Order impose different treatment on Ralls compared to similarly situated persons, they violate Ralls's constitutional right to equal protection under the law.

165. The foregoing violation of Ralls's right to equal protection will also occur if and when Defendants CFIUS or Timothy F. Geithner, or any persons acting on their behalf or on behalf of the President, implement or enforce any actions of the President set forth in the

September Order, as the September Order expressly contemplates.

166. The September Order issued by the President does not prevent judicial review of the constitutionality of the August Order because there is a reasonable expectation that Ralls will be subject to substantially similar CFIUS orders in the future, and the lawfulness of such orders cannot be fully litigated prior to their expiration or revocation.

167. Judicial review of this claim is available notwithstanding Section 721(e) because the President's actions resulting in the violation of Ralls's right to equal protection violate the United States Constitution.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully prays for the following relief:

1. an order and judgment declaring that CFIUS violated the APA in issuing the August Order;
2. an order and judgment declaring that CFIUS lacked the authority to issue an order prohibiting the Terna-Ralls transaction or regulating future transactions not resulting in foreign control of a person;
3. an order and judgment declaring arbitrary and capricious CFIUS's determinations that the Terna-Ralls transaction is a "covered transaction," that it presents "national security risks to the United States," that the Terna-Ralls transaction should be subject to the obligations set forth in the August Order, and that no less burdensome measure should be considered or imposed;
4. an order and judgment declaring that in the September Order, the President exceeded his limited authority to "suspend or prohibit" a "covered transaction," and enjoining implementation and enforcement of the September Order to the extent it exceeds that

- limited authority;
5. an order and judgment declaring that CFIUS's August Order and the President's September Order deprived Ralls of its property without due process, and enjoining implementation and enforcement of the September Order;
 6. an order and judgment declaring that CFIUS's August Order and the President's September Order violated Ralls's right to equal protection of the law, and enjoining implementation and enforcement of the September Order;
 7. costs and attorneys' fees pursuant to any applicable statute or authority; and
 8. such other and further relief that this Court deems just and appropriate.

Respectfully submitted,

/s/ Paul D. Clement

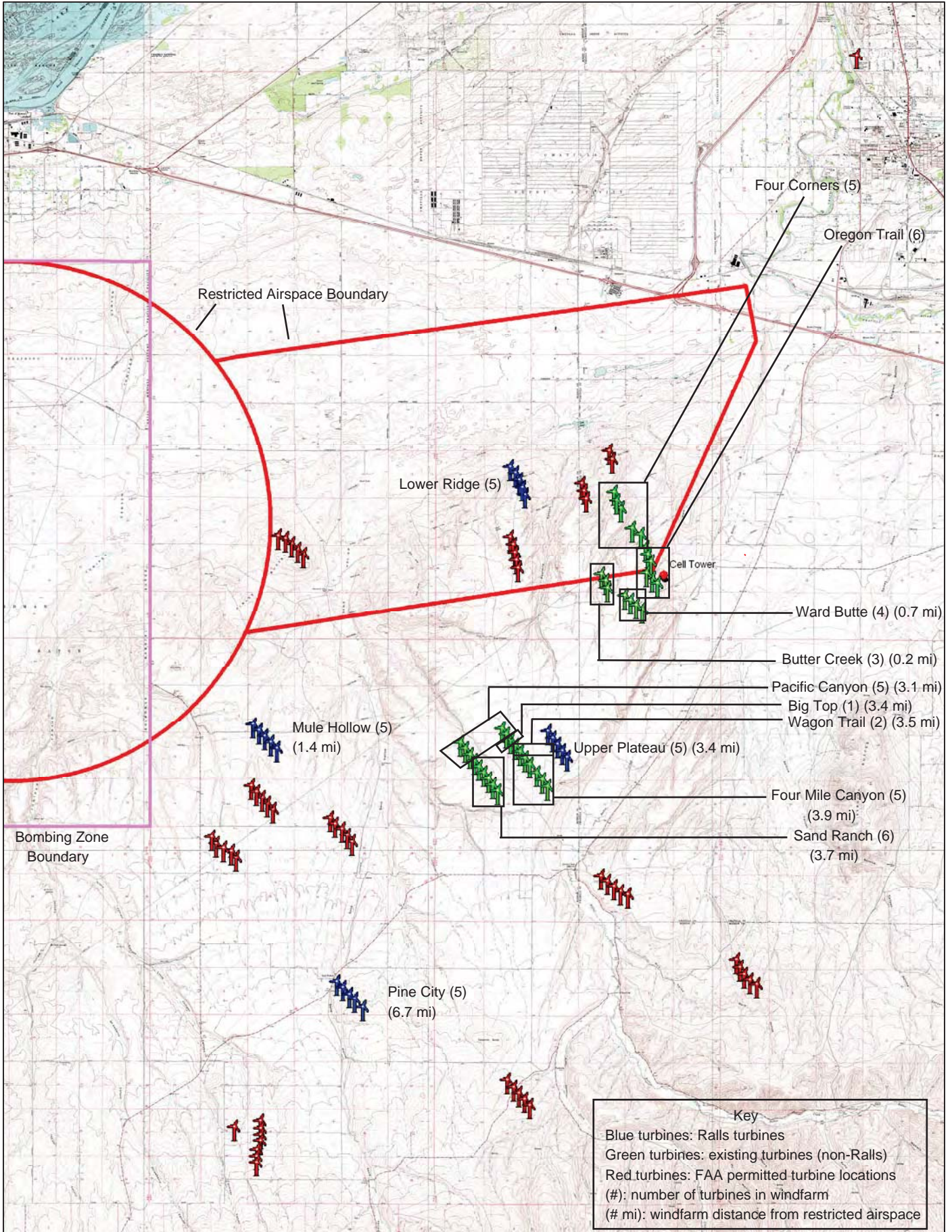
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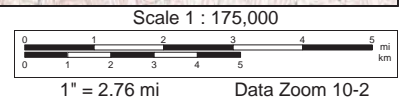
Counsel for Plaintiff Ralls Corporation

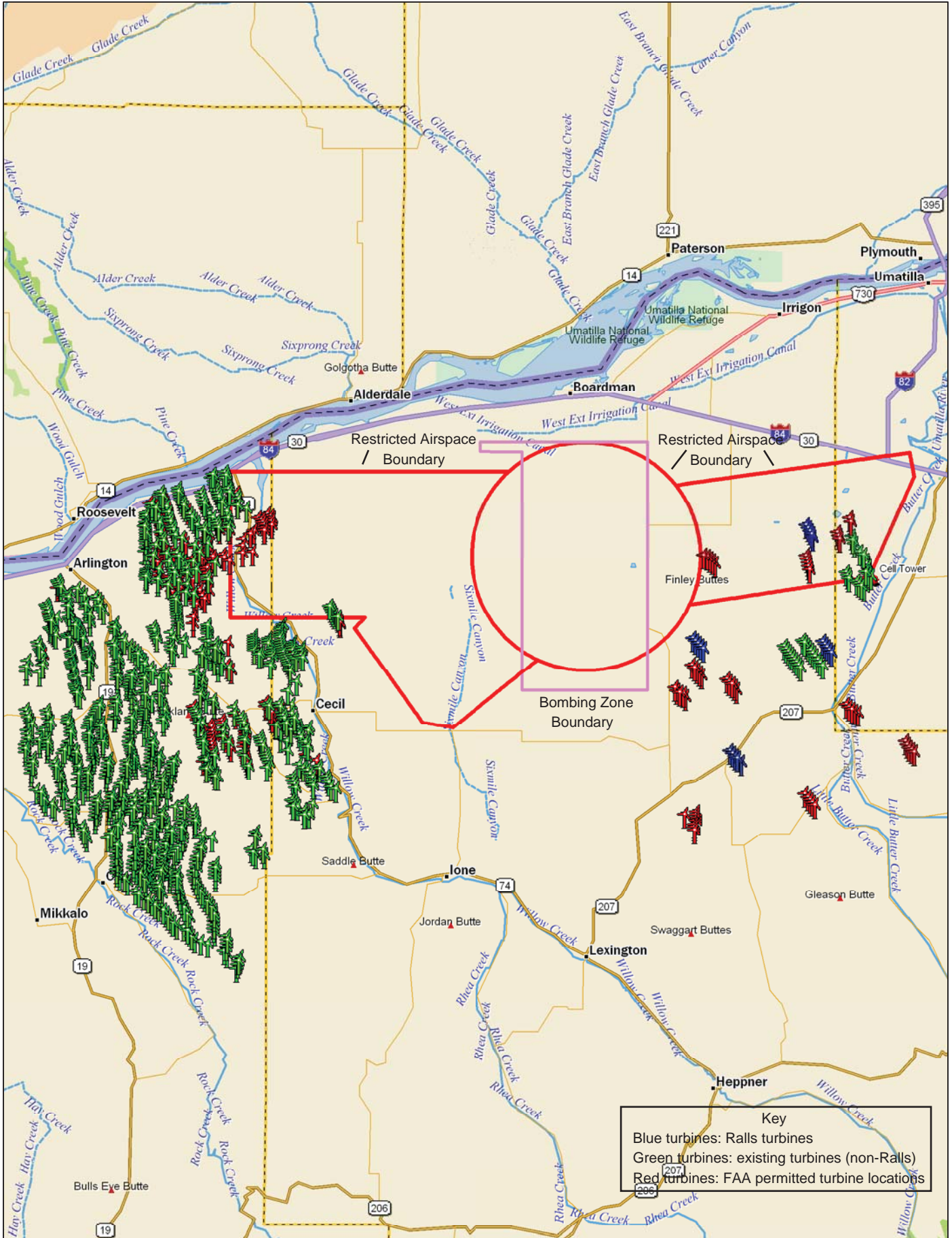


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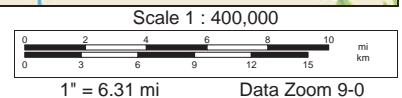


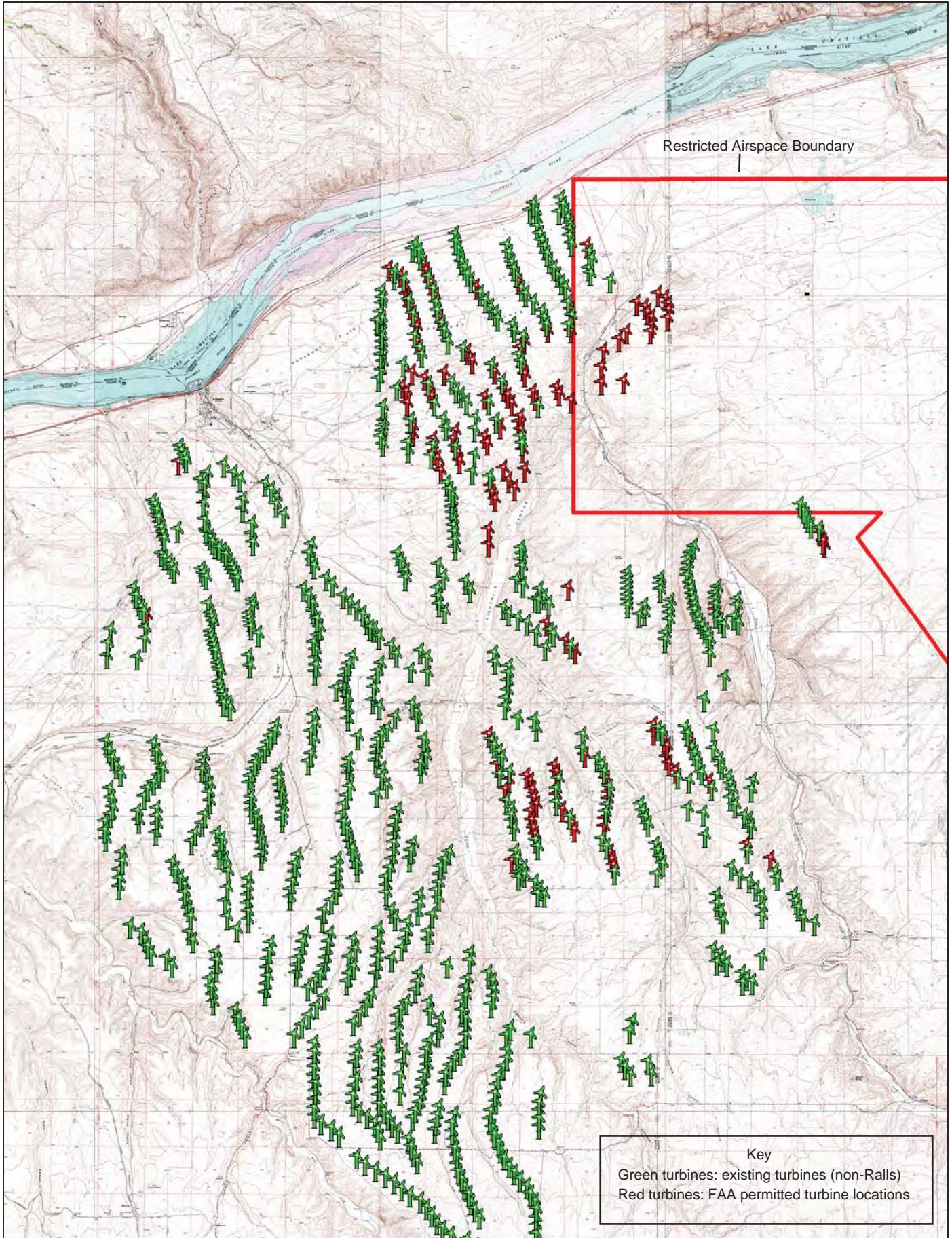


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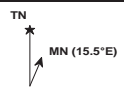




Restricted Airspace Boundary

Key
 Green turbines: existing turbines (non-Ralls)
 Red turbines: FAA permitted turbine locations

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Scale 1 : 175,000

1" = 2.76 mi Data Zoom 10-2



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

JUL 25 2012

Stephen Heifetz
Steptoe & Johnson LLP
1330 Connecticut Avenue, N.W.
Washington, DC 20036

Todd J. Guerrero
Fredrikson & Byron, P.A.
200 South Sixth Street
Minneapolis, MN 55402

Re: CFIUS Case 12-44: Ralls Corporation (United States/UBO: China)/Certain Assets of Terna Energy USA Holding Corporation

Dear Messrs. Heifetz and Guerrero:

This letter transmits an Order Establishing Interim Mitigation Measures (Interim Order) regarding the above-identified transaction, which was notified to the Committee on Foreign Investment in the United States (CFIUS) on June 28, 2012.

If you have any questions regarding the Interim Order, please feel free to contact me at (202) 622-0184 or Robin Epstein at (202) 622-1739.

Sincerely,

A handwritten signature in black ink, appearing to read "Aimen N. Mir".

Aimen N. Mir
CFIUS Staff Chair

Enclosure

Exempt from disclosure under the Freedom of Information Act, 5 USC 552(b). Public disclosure is further prohibited by 50 USC App. 2170(c).

ORDER ESTABLISHING INTERIM MITIGATION MEASURES

Regarding the Acquisition of Certain Assets of Terna Energy USA Holding Corporation by Ralls Corporation

Whereas the Committee on Foreign Investment in the United States (“CFIUS”) has received written notification, pursuant to section 721 of the Defense Production Act of 1950, as amended, 50 U.S.C. App. 2170 (“section 721”), of a transaction (“Transaction”) involving the acquisition of Lower Ridge Windfarm, High Plateau Windfarm, Mule Hollow Windfarm, and Pine City Windfarm, each a limited liability company organized under Oregon law (“Project Companies”), by Ralls Corporation, a company organized under the laws Delaware (“Ralls”) (together, “the Companies”);

Whereas CFIUS has determined that the Transaction, as described in the notice submitted to CFIUS dated June 28, 2012 (“Notice”), constitutes a “covered transaction” for purposes of section 721;

Whereas CFIUS has undertaken a review of the effects of the Transaction on the national security interests of the United States, as required by section 721;

Whereas CFIUS has determined that there are national security risks to the United States that arise as a result of the Transaction, and CFIUS seeks to mitigate those risks pending any further action by the President, or by CFIUS on his behalf;

By the authority vested in CFIUS by section 721, and Executive Order 11858 of May 7, 1975, as amended by Executive Order 13456, 73 Fed. Reg. 4677 (Jan. 23, 2008), CFIUS hereby establishes the following Interim Mitigation Measures, which shall be effective as of the date of this Order (“Effective Date”) and shall apply until such time as this Order expires:

Section 1. Interim Mitigation Measures

Unless otherwise approved by CFIUS in accordance with Section 4 of the Order, the Companies, and any persons acting on behalf of the Companies:

- (a) **No Further Construction or Operations.** Shall immediately cease all Construction and Operations, and shall not undertake any further Construction and Operations, at the Properties.
- (b) **No Stockpiling or Storage.** Shall remove all stockpiled or stored items from the Properties no later than July 30, 2012, and shall not deposit, stockpile, or store any new items at the Properties.
- (c) **No Access.** Shall immediately cease all access, and shall not have any access, to the Properties. Notwithstanding the foregoing, U.S. citizens contracted by the Companies and

approved by CFIUS may access the site until July 30, 2012, solely for purposes of removing any items from the Properties in compliance with the requirement of Section 1(b).

Section 2. Enforcement

This Order is enforceable, through injunctive relief, criminal or civil penalty, or otherwise, pursuant to section 721, the Executive Order, the CFIUS regulations, 18 U.S.C. § 1001, or any other applicable law.

Section 3. Definitions

As used in this Order:

- (a) "Access" means physical access to, and all forms of communication with any person at, the Properties.
- (b) "Construction and Operations" means building, testing, pre-construction activity, or any other activity at the Properties.
- (c) "Order" means this Order issued on behalf of CFIUS.
- (d) "Properties" means any of the sites on which the Project Companies have proposed in the Notice to construct wind farms.

Section 4. Modification

- (a) This Order may be revoked or modified by CFIUS or by order of the President. Any request by the Companies for a modification of this Order must be made in writing.
- (b) The Companies, together or individually, may request a conference with representatives of CFIUS on any matter related to this Order, including any request for a modification of this Order.

Section 5. Expiration

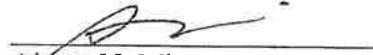
This Order will remain in effect until CFIUS concludes action or the President takes action under section 721 with respect to the Transaction or upon revocation by CFIUS or the President.

Section 6. Miscellaneous

- (a) The provisions of this Order shall be severable, and if any provision hereof or the application of such provision under any circumstances is held invalid by a court of competent jurisdiction in the United States, it shall not affect any other provision of this Order or the application of any provision hereof.
- (b) The terms of these Interim Mitigation Measures are without prejudice to the final disposition of CFIUS's review.

(c) Nothing in this Order is intended to (i) limit any rights the U.S. government may have under law or regulation or (ii) to create rights enforceable at law by any other individuals or entities.

On behalf of CFIUS:



Aimen N. Mir
CFIUS Staff Chair

10/1, 2012

AMENDED ORDER ESTABLISHING INTERIM MITIGATION MEASURES

Regarding the Acquisition of Certain Assets of Terna Energy USA Holding Corporation by Ralls Corporation

Whereas the Committee on Foreign Investment in the United States (“CFIUS”) has received written notification, pursuant to section 721 of the Defense Production Act of 1950, as amended, 50 U.S.C. App. 2170 (“section 721”), of a transaction (“Transaction”) involving the acquisition of Lower Ridge Windfarm, High Plateau Windfarm, Mule Hollow Windfarm, and Pine City Windfarm, each a limited liability company organized under Oregon law (“Project Companies”), by Ralls Corporation, a company organized under the laws Delaware (“Ralls”);

Whereas, among other things, the primary business purpose of Ralls is to provide business opportunities in the United States for wind turbines provided by the Sany Group, which is a Ralls-affiliated entity; Ralls is wholly owned by Mr. Dawei Duan and Mr. Jialing Wu, who are executives of the Sany Group (which includes Sany Electric and Sany Heavy Industries); and Ralls closely consults with the Sany Group and is financed, at least in part, by the Sany Group with respect to Ralls’ activities;

Whereas the Project Companies, Ralls and its subsidiaries, and the Sany Group (which includes Sany Electric and Sany Heavy Industries) are collectively referred to in this Order as the “Companies”;

Whereas CFIUS has determined that the Transaction, as described in the notice submitted to CFIUS dated June 28, 2012 (“Notice”), constitutes a “covered transaction” for purposes of section 721;

Whereas CFIUS has undertaken a review of the effects of the Transaction on the national security interests of the United States, as required by section 721;

Whereas CFIUS has determined that there are national security risks to the United States that arise as a result of the Transaction, and CFIUS seeks to mitigate those risks pending any further action by the President, or by CFIUS on his behalf;

By the authority vested in CFIUS by section 721, and Executive Order 11858 of May 7, 1975, as amended by Executive Order 13456, 73 Fed. Reg. 4677 (Jan. 23, 2008), CFIUS hereby modifies the Order Establishing Interim Mitigation Measures dated July 25, 2012, as follows, which shall be effective as of the date of this Order (“Effective Date”) and shall apply until such time as this Order expires in accordance with Section 6 below:

Section 1. Interim Mitigation Measures

Unless otherwise approved by CFIUS in accordance with Section 5 of the Order, the Companies, including their officers and employees, and any persons acting on behalf of the Companies, and Mr. Dawei Duan and Mr. Jialing Wu:

- (a) **No Further Construction or Operations.** Shall immediately cease all Construction and Operations, and shall not undertake any further Construction and Operations, at the Properties.
- (b) **No Stockpiling or Storage.** Shall remove all stockpiled or stored items from the Properties no later than July 30, 2012, and shall not deposit, stockpile, or store any new items at the Properties, any lay down site identified by the Companies in any information or communication submitted to CFIUS, or at any location that is closer to the R-5701 Restricted Airspace than the lay down site that is farthest from the R-5701 Restricted Airspace.
- (c) **No Access.** Shall immediately cease all access, and shall not have any access, to the Properties. Notwithstanding the foregoing, U.S. citizens contracted by the Companies and approved by CFIUS may access the site solely for purposes of removing any items from the Properties in compliance with the requirements of Section 1(b) or (e)(i).
- (d) **No Sale or Transfer of Sany Items.** Shall not sell or otherwise transfer or propose, or otherwise facilitate the sale or transfer to any third party for use or installation at the Properties of any items made or otherwise produced by the Sany Group.
- (e) **No Sale of Project Companies.** Shall not complete a sale or transfer of the Project Companies or their assets to any third party until:
 - i. All items deposited, installed, or affixed (including concrete foundations) on the Properties subsequent to the acquisition by Ralls of the Project Companies have been removed from the Properties;
 - ii. the Companies notify CFIUS of the intended recipient or buyer;
 - iii. the Companies have not received an objection from CFIUS within 10 business days of notification.

Section 2. Timing of Notices and Other Communications

All notices and other communications shall be in writing and, unless otherwise provided in this Order, shall be deemed to have been duly given or made as of the date of receipt and shall be sent by e-mail and by one of the following means: (a) personal delivery, (b) facsimile, (c) documented overnight courier service, or (d) registered or certified mail, postage prepaid, addressed to the CFIUS' designated representatives at the addresses shown below, or to such other representatives at such other addresses as CFIUS may designate:

Paul Halpern
CFIUS Director, Manufacturing & Industrial Base Policy
Office of the Under Secretary of Defense for Acquisition, Technology & Logistics
Department of Defense
1777 North Kent Street, Suite 12047
Arlington, VA 22209
Fax: 703-588-0504
Email: MIBP.CFIUS@osd.mil

Aimen Mir
CFIUS Staff Chair
Office of Investment Security
Department of the Treasury
1500 Pennsylvania Avenue, N.W., Room 5221
Washington, DC 20220
Fax: 202-622-0391
Email: cfius@treasury.gov

Section 3. Enforcement

This Order is enforceable, through injunctive relief, criminal or civil penalty, or otherwise, pursuant to section 721, the Executive Order, the CFIUS regulations, 18 U.S.C. § 1001, or any other applicable law.

Section 4. Definitions

As used in this Order:

- (a) "Access" means physical access to, and all forms of communication with any person at, the Properties.
- (b) "Construction and Operations" means building, testing, pre-construction activity, or any other activity at the Properties.
- (c) "Order" means this Order, as amended, issued on behalf of CFIUS.

(d) "Properties" means any of the sites on which the Project Companies have proposed in the Notice to construct wind farms .

Section 5. Modification

- (a) This Order may be revoked or modified by CFIUS or by order of the President. Any request by the Companies for a modification of this Order must be made in writing.

- (b) The Companies, together or individually, may request a conference with representatives of CFIUS on any matter related to this Order, including any request for a modification of this Order.

Section 6. Expiration

This Order will remain in effect until CFIUS concludes action or the President takes action under section 721 with respect to the Transaction or upon revocation by CFIUS or the President.

Section 7. Miscellaneous

- (a) The provisions of this Order shall be severable, and if any provision hereof or the application of such provision under any circumstances is held invalid by a court of competent jurisdiction in the United States, it shall not affect any other provision of this Order or the application of any provision hereof.
- (b) The terms of these Interim Mitigation Measures are without prejudice to the final disposition of CFIUS's review.
- (c) Nothing in this Order is intended to (i) limit any rights the U.S. government may have under law or regulation or (ii) to create rights enforceable at law by any other individuals or entities.

On behalf of CFIUS:



Aimen N. Mir
CFIUS Staff Chair

August 2, 2012

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

September 28, 2012

ORDER

- - - - -

REGARDING THE ACQUISITION OF FOUR U.S. WIND FARM PROJECT COMPANIES BY RALLS CORPORATION

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 721 of the Defense Production Act of 1950, as amended (section 721), 50 U.S.C. App. 2170,

Section 1. Findings. I hereby make the following findings:

(a) There is credible evidence that leads me to believe that Ralls Corporation (Ralls), a corporation organized under the laws of Delaware, and its subsidiaries, and the Sany Group (which includes Sany Electric and Sany Heavy Industries), a Chinese company affiliated with Ralls (together, the Companies); and, Mr. Dawei Duan (Mr. Duan) and Mr. Jialing Wu (Mr. Wu), citizens of the People's Republic of China and senior executives of the Sany Group, who together own Ralls; through exercising control of Lower Ridge Windfarm, LLC, High Plateau Windfarm, LLC, Mule Hollow Windfarm, LLC, and Pine City Windfarm, LLC (collectively, the Project Companies), all limited liability companies organized under the laws of Oregon, might take action that threatens to impair the national security of the United States; and

(b) Provisions of law, other than section 721 and the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), do not, in my judgment, provide adequate and appropriate authority for me to protect the national security in this matter.

Sec. 2. Actions Ordered and Authorized. On the basis of the findings set forth in section 1 of this order, considering the factors described in subsection 721(f), as appropriate, and pursuant to my authority under applicable law, including section 721, I hereby order that:

(a) The transaction resulting in the acquisition of the Project Companies and their assets by the Companies or Mr. Wu or Mr. Duan is hereby prohibited, and ownership by the Companies or Mr. Wu or Mr. Duan of any interest in the Project Companies and their assets, whether directly or indirectly through owners, subsidiaries, or affiliates, is prohibited.

(b) In order to effectuate this order, Ralls shall divest all interests in:

- (i) the Project Companies;
- (ii) the Project Companies' assets, intellectual property, technology, personnel, and customer contracts; and
- (iii) any operations developed, held, or controlled, whether directly or indirectly, by the Project Companies at the time of, or since, their acquisition

not later than 90 days after the date of this order, unless such date is extended for a period not to exceed three (3) months, on such written conditions as the Committee on Foreign Investment in the United States (CFIUS) may require. Immediately upon divestment, Ralls shall certify in writing to CFIUS that such divestment has been effected in accordance with this order.

(c) No later than 14 calendar days from the date of this order, the Companies shall:

- (i) remove from the properties on which the Companies have proposed to construct wind farms (including alternate sites) that are identified in the notice filed with CFIUS (Properties) all items, structures, or other physical objects or installations of any kind (including concrete foundations) that the Companies or persons on behalf of the Companies have stockpiled, stored, deposited, installed, or affixed thereon; and
- (ii) provide CFIUS with a statement signed by Mr. Duan and Mr. Wu certifying that the Companies have completed such removal.

(d) The Companies, and any persons acting for or on behalf of the Companies, including officers, employees, and owners, shall cease all access, and will not have any access, to the Properties. Notwithstanding the foregoing, individuals that are U.S. citizens contracted by the Companies and approved by CFIUS may access the Properties solely for purposes of fulfilling the requirements of subsection (c) of this section.

(e) The Companies, Mr. Duan, and Mr. Wu shall not sell or otherwise transfer, or propose to sell or otherwise transfer, or otherwise facilitate the sale or transfer of, any items made or otherwise produced by the Sany Group to any third party for use or installation at the Properties.

(f) Ralls shall not complete a sale or transfer of the Project Companies or their assets to any third party until:

- (i) all items, structures, or other physical objects or installations of any kind (including concrete foundations) that the Companies or persons on behalf of the Companies have stockpiled, stored, deposited, installed, or affixed on the Properties have been removed from the Properties and the Department of Defense has notified the Companies that it has verified the Companies' certification of such removal provided pursuant to subsection (c) of this section;

(ii) Ralls notifies CFIUS in writing of the intended recipient or buyer; and

(iii) Ralls has not received a provisional or final objection from CFIUS to the intended recipient or buyer within 10 business days of the notification in subsection f(ii) of this section. Among the factors CFIUS may consider in reviewing the proposed sale or transfer are whether the buyer or transferee: is a U.S. citizen or is owned by U.S. citizens; has or has had a direct or indirect contractual, financial, familial, employment, or other close and continuous relationship with the Companies or Project Companies, or their officers, employees, or owners; and can demonstrate a willingness and ability to support compliance with this order.

(g) From the date of this order until Ralls provides a certification of divestment to CFIUS pursuant to subsection (b) of this section, the Companies shall certify to CFIUS on a monthly basis that they are in compliance with this order.

(h) Without limitation on the exercise of authority by any agency under other provisions of law, and until such time as the divestment is completed and verified to the satisfaction of CFIUS, CFIUS is authorized to implement measures it deems necessary and appropriate to verify that operations of the Project Companies are carried out in such a manner as to ensure protection of the national security interests of the United States. Such measures may include but are not limited to the following: on reasonable notice to the Project Companies and the Companies, employees of the United States Government, as designated by CFIUS, shall be permitted access, for purposes of verifying compliance with this order, to all premises and facilities of the Project Companies and the Companies located in the United States:

(i) to inspect and copy any books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the Companies or the Project Companies that concern any matter relating to this order;

(ii) to inspect any equipment and technical data (including software) in the possession or under the control of the Companies or the Project Companies; and

(iii) to interview officers, employees, or agents of the Companies or the Project Companies concerning any matter relating to this order.

CFIUS shall conclude its verification procedures within 90 days after the divestment is completed.

(i) The Attorney General is authorized to take any steps necessary to enforce this order.

Sec. 3. Revocation of Prior Orders. CFIUS's Order Establishing Interim Mitigation Measures of July 25, 2012, and Amended Order Establishing Interim Mitigation Measures of August 2, 2012, are hereby revoked.

Sec. 4. Reservation. I hereby reserve my authority to issue further orders with respect to the Companies or the Project Companies as shall in my judgment be necessary to protect the national security.

Sec. 5. Publication and Transmittal.

(a) This order shall be published in the *Federal Register*.

(b) I hereby direct the Secretary of the Treasury to transmit a copy of this order to the appropriate parties named in section 1 of this order.

BARACK OBAMA

THE WHITE HOUSE,
September 28, 2012.

#

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Columbia

Ralls Corporation

Plaintiff(s)

v.

Barack H. Obama; Committee on Foreign Investment in the United States; and Timothy F. Geithner

Defendant(s)

Civil Action No. 1:12-cv-01513-ABJ

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Barack H. Obama
President of the United States
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Paul D. Clement, Bancroft PLLC, 1919 M Street, N.W., Suite 470, Washington, DC 20036

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 10/01/2012

Signature of Clerk or Deputy Clerk

Civil Action No. 1:12-cv-01513-ABJ

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: