

DALE RANKIN, *et al.*
Plaintiffs,

vs.

FPL ENERGY, *et al.*
Defendants.

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IN THE DISTRICT COURT OF

TAYLOR COUNTY, TEXAS

42nd JUDICIAL DISTRICT

FILED
 FEB 24 AM 10 08
 PATRICIA HENDERSON
 DISTRICT CLERK
 TAYLOR COUNTY, TEXAS
 DEPUTY

PLAINTIFFS' EIGHT AMENDED PETITION
AND REQUEST FOR INJUNCTIVE RELIEF

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, DALE RANKIN, STEPHANIE RANKIN, KENNETH G. LAIN, SHERRI A. LAIN, DR. PAUL THAMES, GAIL THAMES, JIM BLAY, LUANN BLAY, STEPHANYE SAYLES TAYLOR, PAULA KINTER, PATRICIA HARVEY, PATRICIA LAPOINT, GREG McEACHERN, WALTER McGEE, DEBRA McGEE, STEVE BRASHER, LINDA BRASHER, and CONVEST CORPORATION (hereinafter referred to as "Plaintiffs"), Plaintiffs herein, and file this their Eight Amended Petition and Request for Injunctive Relief complaining of Defendants, FPL ENERGY, LLC; FPL ENERGY HORSE HOLLOW WIND, LP; FPL ENERGY HORSE HOLLOW LP, LLC; FPL ENERGY HORSE HOLLOW WIND GP, LLC; FPL ENERGY CALLAHAN WIND GROUP, LLC; FPL ENERGY CALLAHAN, LP; ELM CATTLE COMPANY; HILLIARD ENERGY, LTD.; PHILLIP ARLEDGE RANCHES, LTD.; SEA WEST WIND POWER, INC.; SHELTON FAMILY PARTNERSHIP, LTD.; SIVADCO, LTD.; TURNER BIOLOGICAL CONSULTING, LLC; TERRY BRADLEY; DALE E. HARKINS; PAMELA E. HARKINS; DON HEINZE; STEPHEN HILL; WILLIAM G. KERN; JOHN C. McGHEE; BELINDA DESPUJOLS McGHEE; C.O. MORERY, JR.; EMMA NIX; ROYCE PETERSON; LOLA JAMES RANCH; CHARLES WAYNE RICE; LANA L. RICE

MARTIN; LOLA NOLETA RICE; ALEX F. SEARS; DICK SEARS; GARDA LYNN SEARS; VIRGIL SEARS; DANA L. WADE; ROBERT B. WARNER; ROBERTA WARNER; JOSEPH J. WILLIAMS; and STEPHEN D. WOOD (hereinafter referred to as "Defendants"), and would respectfully show as follows:

I.
DISCOVERY CONTROL PLAN

1. Plaintiffs intend for discovery to be conducted under a Level 3 discovery control plan.

II.
JURISDICTION AND VENUE

2. This Court has jurisdiction over the parties and the subject matter of this suit. Plaintiffs are residents of Taylor County. Defendants either own property in Taylor County or conduct business in Taylor County.

3. Venue is proper in Taylor County, Texas because the subject matter of this lawsuit concerns property located in Taylor County, Texas and pursuant to Section 15.001 *et seq.* of the Tex. Civ. Prac. & Rem. Code.

III.
PARTIES

4. Plaintiff, DALE RANKIN, is an individual residing in Tuscola, Taylor County, Texas.

5. Plaintiff, STEPHANIE RANKIN, is an individual residing in Tuscola, Taylor County, Texas.

6. Plaintiff, KENNETH G. LAIN, is an individual residing in Tuscola, Taylor County, Texas.

7. Plaintiff, SHERRI A. LAIN, is an individual residing in Tuscola, Taylor County, Texas.
8. Plaintiff, DR. PAUL THAMES, is an individual residing in Abilene, Taylor County, Texas.
9. Plaintiff, GAIL THAMES, is an individual residing in Abilene, Taylor County, Texas.
10. Plaintiff, JIM BLAY, is an individual residing in Buffalo Gap, Taylor County, Texas.
11. Plaintiff, LUANN BLAY, is an individual residing in Buffalo Gap, Taylor County, Texas.
12. Plaintiff, STEPHANYE SAYLES TAYLOR, is an individual residing in Tuscola, Taylor County, Texas.
13. Plaintiff, PAULA KINTER, is an individual residing in Tuscola, Taylor County, Texas.
14. Plaintiff, PATRICIA HARVEY, is an individual residing in Tuscola, Taylor County, Texas.
15. Plaintiff, PATRICIA LAPOINT, is an individual residing in Tuscola, Taylor County, Texas.
16. Plaintiff, GREG McEACHERN, is an individual residing in Abilene, Taylor County, Texas.
17. Plaintiff, WALTER McGEE, is an individual residing in Ovalo, Taylor County, Texas.
18. Plaintiff DEBRA McGEE is an individual residing in Ovalo, Taylor County, Texas.

19. Plaintiff STEVE BRASHER is an individual residing Ovalo, Taylor County, Texas.

20. Plaintiff LINDA BRASHER is an individual residing in Ovalo, Taylor County, Texas.

21. Plaintiff CONVEST CORPORATION is a Louisiana entity which owns property in Taylor County.

22. Defendant, FPL ENERGY, LLC ("FPL Energy") is an entity, organized and existing under the laws of the State of Delaware, that conducts business in Texas by, *inter alia*, building, owning and operating wind farms. As evidence of same, Plaintiffs allege that FPL Energy filed a request for a certificate of authority on May 5, 1999 to conduct business in Texas. Further, on October 19th, 2004 FPL Energy, LLC announced on its website, FPLEnergy.com, that FPL Energy "will build, own and operate...the Callahan Divide Wind Energy Center, to be located in Taylor County, Texas. Again, on April 5, 2005 FPL Energy announced on its website, FPLEnergy.com, that FPL Energy "will build, own and operate...the Horse Hollow Wind Energy Center, to be located in Taylor County, Texas." Plaintiffs allege that FPL Energy controls the construction and operation of these wind farms in Texas and specifically locates FPL Energy employees in Texas to further the operation and control of these wind farms. FPL Energy has been duly served and filed a special appearance herein. Subsequently, after Plaintiffs' responded to FPL Energy's special appearance, FPL Energy filed an answer, and therefore, has made an appearance herein.

23. Defendants, FPL ENERGY HORSE HOLLOW WIND, LP, FPL ENERGY HORSE HOLLOW WIND LP, LLC, and FPL ENERGY HORSE HOLLOW WIND GP, LLC are entities organized by FPL Energy, under the laws of the State of Delaware and are authorized to

transact business in Texas. They have made an appearance herein.

24. Defendants, FPL ENERGY CALLAHAN WIND GROUP, LLC and FPL ENERGY CALLAHAN WIND, LP are entities organized under the laws of the State of Delaware and authorized to transact business in the Texas. Said Defendants may be served with process by serving the registered agent, CT Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201. They have not yet made an appearance herein.

25. Defendant ELM CATTLE COMPANY, upon information and belief, is an entity organized under the laws of Texas and may be served by serving his attorney Alan Carmichael pursuant to rule 11 agreement.

26. Defendant HILLIARD ENERGY, LTD. is, upon information and belief, a limited partnership organized under the laws of the State of Texas and may be served with process by serving its registered agent, Brent D. Hilliard at 511 W. Missouri Avenue, Midland, Texas 79701.

27. Defendant PHILLIP ARLEDGE RANCHES, LTD. is, upon information and belief, a limited partnership organized under the laws of the State of Texas located at 5382 FM 89, Tuscola, Texas 79562 and may be served with process by serving his attorney Alan Carmichael pursuant to rule 11 agreement.

28. Defendant SEA WEST WIND POWER, INC. is an entity, based upon information and belief, organized under the laws of California and can be served by serving its executive vice-president, Steven M. Thompson at 1455 Frazee Road, 9th floor, San Diego, CA 92108.

29. Defendant SHELTON FAMILY PARTNERSHIP, LTD. is, upon information and belief, a limited partnership organized under the laws of Texas and may be served with process by serving his attorney Alan Carmichael pursuant to rule 11 agreement.

30. Defendant SIVADCO, LTD. is, upon information and belief, a limited partnership organized under the laws of the State of Texas and may be served with process by serving its registered agent, Joe E. Davis, 3457 Curry Lane, Abilene, Texas 79606.

31. Defendant TURNER BIOLOGICAL CONSULTING, LLC is, upon information and belief, a limited liability company organized under the laws of the State of Texas and may be served with process by serving its registered agent, John Scott Turner at 618 West Street, Suite A, Buffalo Gap, Texas 79508.

32. Defendant TERRY BRADLEY is an individual residing at 4874 CR 184, Ovalo, Texas 79541 and may be served with process by serving his attorney Alan Carmichael pursuant to rule 11 agreement.

33. Defendant DALE E. HARKINS is an individual with a residence at 317 Bell Plains Rd, Tuscola, Texas 79562 and may be served with process by serving him at his residence.

34. Defendant PAMELA E. HARKINS is an individual with an address of 317 Bell Plains Rd, Tuscola, Texas 79562 and may be served with process by serving her at her residence.

35. Defendant DON HEINZE is an individual with an address of 472 Heinze Ranch Rd, Buffalo Gap, Texas 79508 and may be served with process by serving his attorney Alan Carmichael pursuant to rule 11 agreement.

36. Defendant STEPHEN HILL is an individual residing at 1946 Chimneywood Court, Abilene, Texas. 79602 and may be served with process by serving his attorney Alan Carmichael pursuant to rule 11 agreement.

37. Defendant WILLIAM G. KERN is an individual residing at 223 West Wall Street, Suite 823, Midland, Texas 79701 and may be served with process by serving his attorney Alan Carmichael pursuant to rule 11 agreement.

38. Defendant JOHN C. MCGHEE is an individual residing at 11906 Whitewing Avenue, Austin, Texas 78753 and may be served with process by serving his attorney Alan Carmichael pursuant to rule 11 agreement.

39. Defendant BELINDA DESPUJOLS MCGHEE is an individual residing at 11906 Whitewing Avenue, Austin, Texas 78753 and may be served with process by serving her attorney Alan Carmichael pursuant to rule 11 agreement.

40. Defendant C.O. MORERY, JR. is an individual whose address is not yet known.

41. Defendant EMMA NIX is an individual residing at 126 CR 195, Ovalo, Texas 79541 and may be served with process by serving her attorney Alan Carmichael pursuant to rule 11 agreement.

42. Defendant ROYCE PETERSON is an individual residing at 6 Turnberry Circle, Abilene, Texas 79606 and may be served with process by serving him at his residence.

43. Defendants LOLA JAMES RANCH, CHARLES WAYNE RICE, LANA L. RICE MARTIN, DANA L. WADE, AND LOLA NOLETA RICE are individuals residing at 401 E. Pierce Street, Winters, Texas 79567 and may be served with process by serving their attorney Alan Carmichael pursuant to rule 11 agreement.

44. Defendant ALEX F. SEARS is an individual residing at 14371 US HWY 277 South, Wingate, Texas 79566 and may be served with process by serving his attorney Alan Carmichael pursuant to rule 11 agreement.

45. Defendant DICK SEARS is an individual residing at 1044 Alexis, Pottsboro, Texas 75076 and may be served with process by serving his attorney Alan Carmichael pursuant to rule 11 agreement.

46. Defendant GARDA LYNN SEARS is an individual residing at 14653 US HWY 277 South, Wingate, Texas 79566 and may be served with process by serving her at her residence.

47. Defendant VIRGIL SEARS is an individual residing at 188 Kiowa Street, Lake Kiowa, Texas 76240 and may be served with process by serving his attorney Alan Carmichael pursuant to rule 11 agreement.

48. Defendant ROBERT B. WARNER is an individual residing at 14686A HWY 277 South, Texas 79566 and may be served with process by serving his attorney Alan Carmichael pursuant to rule 11 agreement.

49. Defendant ROBERTA WARNER is an individual residing at 14686A HWY 277 South, Texas 79566 and may be served with process by serving her attorney Alan Carmichael pursuant to rule 11 agreement.

50. Defendant JOSEPH J. WILLIAMS is an individual residing at 10708 Ashmont, Fort Worth, Texas 76248 and may be served with process by serving his attorney Alan Carmichael pursuant to rule 11 agreement.

51. Defendant STEPHEN D. WOOD is an individual residing at 3504 Corinthian Court, Arlington, Texas, 76016, and has made appearance herein.

IV.
BACKGROUND FACTS

52. Plaintiffs, Dale and Stephanie Rankin, purchased 114.5 acres of land in Taylor County in 1989 with the intention of building a home and their future on the property. At the time of purchase, the property had a small house on it, two rough roads, a dilapidated fence and an abundance of brush that needed to be cleared. Over the last 16 years, the Rankin family has cleared much of the property, rebuilt the fences, built roads, built a polo field and a horse arena, remodeled the original old house, built a beautiful rock home for the family, built a large horse barn with stalls and runs, built numerous corrals, paddocks and pens for the family's trained horses, built a property manager's residence, cross fenced the property and, to preserve the natural beauty of the property and the scenic view of the surrounding hills, installed underground power lines. The Rankins also installed a new water well. In short, the Rankin family built a life and their future on this scenic ranch in Tuscola, Taylor County, Texas.

53. Similarly, Plaintiffs, Kenneth and Sherri Lain, purchased property near the Rankin's property in 1998. Like the Rankins, the Lains extended significant time, toil, energy and money to clear the raw land, build a large home, build a stock tank with a swim dock, add a new fence, new roads, horse pens, barns, and drill four water wells. Unique to this property, and all of Taylor County, is The God's Creation natural spring and waterfall which is located on the Lain's property. This Taylor County natural resource has been used as the backdrop to a movie set in the past. The Lains built a facility for cooking and relaxing at the site of the waterfall. This is a special place in Taylor County; special in regards to its landscape and heritage.

54. Similarly, the remaining plaintiffs own property in the Coronado's Camp to Buffalo Gap area of southern Taylor County and have invested their time, toil and money on such

properties. Plaintiffs acquired or maintain such properties because of the scenery, heritage and history of the Coronado's Camp to Buffalo Gap area of south Taylor County. Plaintiffs Lapoint, the McGees, and the Brashers acquired their ranches in the Buffalo Gap area – an isolated area – with the specific intent of living a rural lifestyle and enjoying the wildlife. In addition, the Brashers acquired their property with the intent of developing a bed & breakfast to supplement their retirement income. The B&B was to be for people to “get away” and enjoy this scenic rural area. Plaintiffs, the Blays, moved to the country years ago to escape the city life style in part because of the tremendous benefits to their special needs son; a young man who is now emotionally affected by the onslaught of wind turbines. Plaintiff Stephanie Sayles Taylor owns a beautiful ranch that has been in her family for a hundred years. She is the steward of this property for future generations of Sayles descendants. This scenic ranch is now surrounded by giant turbines. The Thames, also plaintiffs, invested significant resources in building a beautiful vacation home overlooking Lake Abilene and Abilene State Park. The site of the home was chosen because of the once beautiful scenery. Plaintiffs Harvey and Kinter also chose to live a rural lifestyle with a property that is used as a retreat for their friends and acquaintances. Plaintiff McEachern also relocated to the country for the specific purpose of the lifestyle. McEachern has invested significant amounts of his own time, toil and money building his home and improving his property; a home that has been damaged by the dynamite blasts that Defendants FPL Energy and Sea West Wind Power, Inc. have used to build turbines. Plaintiff McEachern also has a special needs child and raising his child in a rural environment was a reason for purchasing his ranch. In addition, Plaintiffs McEachern, Rankins and the Lains now have high voltage power lines which Defendant Sea West intentionally located as close as possible to the McEachern home, the Lain home and Dale Rankin’s mother’s home without actually getting on the McEachern, Rankin or Lain property.

For all of these Plaintiffs, the use and enjoyment of their properties has been significantly impacted by these out-of-place wind turbines.

55. Plaintiff Convest Corporation (“Convest”) purchased 640 acres with a home adjacent to property owned by Defendants Dale and Pamela Harkins. Convest Corporation is owned by Mr. John Connolly. Defendants’ FPL Energy, Turner Biological Consulting, LLC and Hilliard Energy, LTD repeatedly trespassed across Plaintiff Convest’s property without permission. Further, upon information and belief and subject to confirmation during discovery, employees of FPL Energy, Turner Biological Consulting, LLC and Hilliard Energy, LTD used stock ponds on Convest’s property to draw water for their own use and, upon information and belief and subject to confirmation during discovery, their employees hunted on Convest’s property without permission. FPL Energy or their agents even put their own lock on Convest’s access gate. Other agents of FPL Energy, Hilliard Energy and Turner Biological repeatedly trespassed onto and across Plaintiff Convest’s property.

56. The Plaintiffs acquired their properties with the intent of country living, enjoying the wildlife on their properties, some hunt on their properties, some let others hunt on their properties yet the Plaintiffs have suffered the following effects from the erection of the turbines: significant loss of use and enjoyment of their properties, negative impacts on the wildlife on their properties, interference with the ability to hunt and have others hunt on their properties, interference with the electrical functions of their homes such as satellites, televisions, and the circuitry, destruction of the scenic countryside, a diminishing of the use of the properties for outside functions, lights, noise, trespass by the Defendants onto their properties, damage to their homes from dynamite blasts, cutting down trees by the Defendants on a Plaintiff’s property, concern for the health impacts of living under turbines, dread, fear and the loss of the previous love

for their homes. The public as well as suffered a loss from the destruction of this scenic and historic area of Taylor County and the complete disregard by FPL Energy, LLC for the endangered species in the area when it constructed the Callahan Divide Wind Farm.

57. On April 5th, 2005, Defendant, FPL Energy announced that it intended to build, own and operate a 230 unit wind turbine farm on 49,000 acres in Taylor County. FPL Energy named the project the "Horse Hollow Wind Farm." These wind turbines are approximately 400 feet tall and have destroyed some of Taylor County's most scenic areas, such as the Coronado's Camp to Buffalo Gap area where Plaintiffs' properties are located. By comparison, the Statue of Liberty is 300 feet tall.

58. The project has negatively impacted surrounding properties with the noise of the turbines and the constant blinking red lights in the sky. The project has also diminished Plaintiffs' property values and brought an end to a way of life in the Coronado's Camp to Buffalo Gap area of south Taylor County.

59. The presence of these turbines has impacted the hunting of wildlife on the Plaintiffs' properties by way of the constant noise. Certain of the Plaintiffs purchased their properties with the intent of hunting wildlife. The presence of the turbines has caused damage to Plaintiffs' use and enjoyment of the hunting of wildlife on their properties. The wind turbines kill migratory birds and bats and interfere with the habitat of local wildlife which are a source of enjoyment for tourists and residents and thus help sustain property values in a part of the County whose highest and best use is ranching, agriculture, tourism, homes, second homes and retirement homes.

60. Defendant, Stephen Wood, owns property which includes a scenic bluff overlooking the Plaintiffs' property. Defendant, Stephen Wood, received cash payments for every

turbine he placed on his property. While Defendant Wood is enriching himself by allowing these giant wind turbines to be placed on his property, he is destroying the scenic beauty of the valley below his property, diminishing the property values in the valley, and destroying the way of life of his neighbors; a way of life that drew people to the valley years before FPL Energy thought of placing hundreds of giant wind turbines in Taylor County, Texas.

61. The huge wind turbines in this project will produce very little electricity and that electricity is of less value than electricity produced by reliable coal and gas fired generating plants. This means that when the government subsidies, discussed below, run out, Plaintiffs and others similarly situated in Taylor County are likely to be confronted by a poorly maintained and deteriorating wind energy facility that may one day become derelict because, upon information and belief and subject to confirmation during discovery, the provision in the lease agreements for the dismantling of non-operational turbines is not absolute.

62. These wind turbines produce very little electricity and that electricity is of less value than electricity produced by reliable coal and gas fired generating plants. These wind turbines are built because of huge government subsidies that are acquired through the lobbying process and benefit solely the wind energy companies and the landowners who put the turbines on their property; there is little or no benefit to the public and when the turbines become old and no longer function they may well litter the landscape and Taylor County may be left looking like a vast junk yard for old wind turbines.

63. Electricity from wind has less real value than electricity from reliable ("dispatchable") generating units because electricity cannot be stored in any appreciable quantities. Therefore, electricity must be produced at the same time that it is demanded, which means that the value of a kilowatt of electricity varies widely, depending on when it is generated, where it is

generated, and its reliability. Electricity from wind turbines, then, is low in value compared to electricity from traditional energy sources because electricity from wind is (i) Intermittent – i.e., available only when the wind is blowing within the right speed range. No electricity is produced when the speed is below the minimum of the range or above the maximum. For example, the 1.5 MW (megawatt) turbines used in other FPL Energy projects apparently begin producing electricity when the wind reaches about 3 meters per sec or 8.9 miles per hour, achieve rated capacity at about 15 m/s or 33.6 mph, and cut out at 25 m/s or 55.9 mph; (ii) Highly variable or volatile, i.e., electricity output varies widely as wind speed changes. For a 300 MW (300,000 kW) wind energy facility, the amount of electricity would vary from 0 to 300,000 kWh and would fluctuate from minute to minute within that range; (iii) Unpredictable, i.e., the availability of the electricity at any moment cannot be predicted accurately. Such availability could be predicted accurately only to the extent that momentary wind speeds at turbine locations could be predicted accurately; (iv) Largely uncontrollable, i.e., the electricity output from wind turbines is largely subject to wind conditions, rather than being “controllable” by electric system dispatchers; (v) Counter-cyclical with electricity demand, i.e., wind tends to be strongest during spring months which is a period when the demand for electricity in the region tends to be lowest.

64. Electricity must be produced as it is demanded by users of electricity; therefore, most generating units must be immediately available and controllable so that they can be turned on, increased (“ramped up”) in output, decreased in output, and turned off. Such generating units are called “dispatchable.” Their output is more valuable than electricity from wind turbines because the output can be counted on when needed and maintained at relatively steady levels. While the times required to start up, ramp up and shut down differ, generating units powered by traditional energy sources – coal, oil, natural gas, nuclear energy and hydro power – are largely dispatchable.

65. Wind energy facilities must be backed up by dispatchable generating units that impose extra costs and place an additional burden on transmission and electric system management, adding to their true costs.

66. Because the output from wind turbines is intermittent, highly variable, largely uncontrollable and unpredictable, other generating units (i.e., "dispatchable" units) must be kept immediately available to "back-up" the wind turbines by increasing or decreasing their production of electricity. Units serving this backup role must be on line (connected to the grid and producing electricity) and running below their peak capacity and efficiency, or in a "spinning reserve" mode (i.e., connected to the grid and synchronized but not putting electricity into the grid.) The generating units serving this role incur costs that would not normally be incurred if they were not serving the backup role, including fuel and operating costs and extra wear and tear on the units as they are ramped up and down.

67. Electricity from wind energy facilities makes inefficient use of transmission capacity and adds to the burden of keeping electric systems ("grid") in balance. Transmission capacity must be available that is equal to the maximum capacity of the wind energy facility for those times when the wind energy facility is producing at maximum capacity. Upon information and belief, wind energy facilities in Taylor County have average annual capacity factors in the range of 25 percent to 35 percent, which means that any lines serving those wind energy facilities exclusively would be used only to 25 percent to 35 percent of capacity because those lines must at all times be prepared to receive the maximum power capable of being generated by the turbines under optimum wind conditions.

68. The ecological value of wind energy facilities is an illusion: Uninformed proponents of environmental protection are led to believe that wind energy facilities can make a

serious contribution to America's energy needs without impacting the environment to the extent of impacts by carbon fuel energy facilities. This, however, is false. The primary benefit to be derived from wind energy facilities are tax deductions and federal and state subsidies to out-of-state companies like FPL Energy and not from the delivery of a significant amount of power that substitutes for power manufactured through carbon-based fuels.

69. The subsidies available to wind energy facilities in Taylor County include: (i) Federal accelerated depreciation; (ii) Federal Production Tax Credits; (iii) State tax credits; (iv) the Abatement of substantial property taxes. The total benefit to FPL Energy for these subsidies is no less than 250 million dollars for the Horse Hollow project. That means that the U.S. Taxpayer is paying the bill for these wind turbines, not FPL Energy. One preeminent subsidy available to companies with income to shelter is 5-year double declining balance accelerated depreciation that can be used by the owner or any entity filing a consolidated tax return with the owner to calculate depreciation for tax purposes. Five-year, 200% declining balance depreciation can be used for capital costs of facilities using wind to produce electricity for sale. Nearly all other electric generating facilities must use 20-year depreciation, so wind energy facility owners have a significant price advantage for roughly the first six years.

70. When tax subsidies run out, in the sense that all accelerated depreciation has been used, the Plaintiffs and other citizens of Taylor County are likely to be left with a blight of hundreds, if not thousands, of wind turbines standing 400 feet over the majestic Coronado's Camp to Buffalo Gap area that are likely to be poorly maintained because their electricity, on an operating level, is too expensive to sell in an open, non-subsidized market. Five-year double declining balance (5-yr. 200% DB) depreciation permits sheltering otherwise taxable income with the depreciation deductions. Based on an assumption that the capital costs of the wind energy facility

that is the subject of this civil action is \$300,000,000 -- (which is the approximate amount that, upon information and belief, FPL Energy has estimated for its Horse Hollow Wind energy facility) Defendant FPL Energy through a consolidated balance sheet with its parent company, could shelter \$60,000,000 of profits associated with electricity sales the first year, \$96,000,000 the second year, \$57,600,000 the third year, \$34,560,000 the fourth year, \$34,560,000 the fifth year, and \$17,280,000 the sixth year. Over a six year period, assuming a 35 percent tax rate, the reduction in out-of-pocket taxes would be \$105,000,000 for Defendant FPL Energy's parent, Florida Power & Light.

71. Upon information and belief, and subject to confirmation during discovery, no lease with a local landowner and no part of the contract between FPL Energy and the landowners provides for the absolute removal of wind turbines at such time as they are no longer used.

72. The benefits to the State of Texas or Taylor County of the wind energy facility project being constructed by FPL Energy are significantly outweighed by the project's negative impacts. The bulk of the capital investment in wind energy facilities consists of turbines, blades, towers, controls, cabling and related electrical equipment that is manufactured elsewhere. Generally wind energy facilities can be constructed in a relatively short time because the turbines, blades, and much of the other equipment are produced elsewhere and shipped for assembly here. Construction jobs, then, will last only between six months and a year.

73. Upon information and belief and subject to confirmation during discovery, FPL Energy itself has estimated that the entire project can be managed by ten to fifteen permanent employees and, also upon information and belief, some of these employees will be security employees who will earn at or slightly above the Federal minimum wage. Other employees will be highly paid maintenance personnel and technicians, but the most highly paid workers are likely to

come from elsewhere for periodic maintenance and unexpected outages.

74. By contrast to the minimal economic contribution to Taylor County of a continuing wind energy facility, the largest job creating industry in this area of Taylor County is the construction of Ranch homes, second homes, vacation homes and retirement homes by persons who have acquired substantial assets in the economically prosperous areas of Texas. The construction of just a few homes each costing \$400,000 will provide more full time equivalent jobs, when the purchase of construction materials from Taylor County businesses are taken into account, than the operations of FPL Energy's wind energy facility for a year.

75. In balancing the equities as is required in an action for nuisance, the limited benefits of the proposed project must be measured against the following detriments to the individual named Plaintiffs and other landowners similarly situated in Taylor County: (1) the overwhelming negative impact to the scenic beauty; (2) the constant noise; (3) there is an adverse impact on tourism, recreation, ranching, home construction and second, vacation and retirement home construction because of noise, scenic impairment, flashing of the blades when the sun strikes at a particular angle, and adverse impacts on wildlife resources; and (4) a significant danger from broken blades, lightening strikes and collapsing towers. All of these negative aspects to Defendants' wind energy project have a significant negative impact on the Plaintiffs' property values.

V. NUISANCE

76. Plaintiffs re-allege the background facts provided in paragraphs 54 through 75, above.

77. Plaintiffs allege that they have a private interest in their land. Plaintiffs allege that the Defendants intend to interfere or invade the Plaintiffs' interest by conduct that is negligent,

intentional and unreasonable, abnormal and out of place in the area of south Taylor County known as Coronado's Camp all the way east to Buffalo Gap. The wind turbines constitute a nuisance because: (i) the wind turbines create constant noise at any time when the wind is blowing; (ii) the wind turbines create an eye sore that destroys the natural beauty of the countryside and creates a "flicker" or "strobe" effect during the times the sun is near the horizon; (iii) the wind turbines have blinking red lights that dominate the night sky and destroy the natural beauty of a star filled sky that was one of the reasons that the plaintiffs located their homes in this area and is one aspect of the attractiveness of this area to tourists; and, (iv) the wind turbines negatively impact the habitat of the native avian wildlife, including endangered species such as the Black Capped Vireo, in the area which is one the key factors in the Plaintiffs locating their homes in this area and is one of the sources of enjoyment for tourists and all residents and thus help sustain property values and the best use of this area which is tourism and homes.

78. The Defendants' Horse Hollow Wind Farm will result in a condition that will substantially interfere with the Plaintiffs' private use and enjoyment of their land and will negatively impact their property values and commercial use of their properties for deer leases, bed & breakfast facilities and the construction of homesteads, second homes and retirement homes, tourism and recreation.

79. This nuisance will cause injury to the Plaintiffs by diminishing their use and enjoyment of their properties and reducing their property values. Upon information and belief, and subject to confirmation during discovery, all Plaintiffs are sufficiently close to Defendant's FPL Energy's wind energy facility to be subject to noise from the turbines whenever they are operating at or near capacity. Plaintiffs make this claim as to the FPL Energy Defendants, and the landowners on whose property the Horse Hollow project has been built.

80. Plaintiffs McEachern, the Lains, and the Rankins have suffered a unique nuisance caused by FPL Energy and Sea West Wind Power Inc. in that these Defendants have located high voltage power lines in close proximity to these Plaintiffs homes. Such power lines generate strong electromagnetic fields and have been linked to various illness including cancers. These Plaintiffs have legitimate fears regarding the health affects of such power lines. Interestingly, these Defendants could have located the power lines further from the homes of these Plaintiffs but chose, instead, to run the lines down the Plaintiffs property boundaries.

VI. **PUBLIC NUISANCE**

81. Plaintiffs re-allege the background facts and allegations asserted in paragraphs 54 through 80, above.

82. Plaintiffs allege that they as private citizens have standing to bring suit for the Defendants' intended, unreasonable conduct; conduct which constitutes a public nuisance because it is an unreasonable interference with a right common to the general public. Plaintiffs' make this claim against all Defendants. The best use of this beautiful area of Taylor County is for tourism and recreation and the construction of ranches, homes, second homes and retirement homes. Defendants' project makes this area of Taylor County much less attractive for tourism and recreation as well as the building of homes, second homes, and retirement homes and will result in the reduction of property values throughout the area.

VII. **TRESPASS TO REAL PROPERTY**

83. Plaintiffs re-allege the background facts and allegations asserted in paragraph 54 through 82, above.

84. Plaintiffs allege that they own and, therefore, have lawful right to possess the real

property on which they live. Plaintiffs allege that the giant wind turbines that Defendants have placed and intend to place around their property will result in a physical invasion, by noise, of their land which will destroy the use and enjoyment of the Plaintiffs' land. Plaintiff McEachern's property has been invaded by physical trespass of persons who have damaged his property by cutting down trees and fences and from vibrations from dynamite blasts that have cracked the foundation to his home. Plaintiff McEachern makes this claim as to Defendant Sea West Wind Power, Inc. and the FPL Defendants. Plaintiff Convest Corporation makes this claim as to Defendants FPL Energy, Hilliard Energy, LP and Turner Biological as described in paragraph 55 above.

VIII. **REQUEST FOR INJUNCTIVE RELIEF**

85. Plaintiffs re-allege the background facts and allegations asserted in paragraph 54 though 84, above.

86. Plaintiffs allege that they have suffered and will continue to suffer significant and irreparable harm. Such harm is imminent and of the type where there is no adequate remedy at law. Plaintiffs seek an injunction that prohibits the Defendants from engaging in the acts described above, namely placing monster wind turbines in and around the Coronado Camp to Buffalo Gap area of south Taylor County.

IX. **DAMAGES**

87. Plaintiffs allege that the intended acts of the Defendants will result in damage to the Plaintiffs, that such damage is substantial, irreparable, and will be proximately caused by the placing of these wind turbines around their properties. Plaintiffs are entitled to injunctive relief to prevent this harm. In the absence of appropriate injunctive relief, Plaintiffs are entitled to damages

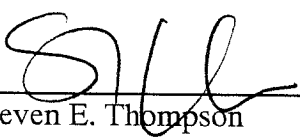
related to the diminution of their property values, compensatory damages for the destruction of their homes and lifestyle, and loss of use and enjoyment of their properties, and damages in the form of relocations costs and lost time spent relocating their homes and for mental anguish. Plaintiffs are entitled to exemplary damages resulting from the damage to their property. Plaintiffs are entitled to attorney fees and costs of court in pursuing the relief requested.

X.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that they be granted injunctive relief and/or upon final trial hereof, that judgment be taken against Defendants, awarding Plaintiffs damages, including actual damages, exemplary damages, prejudgment and post-judgment interest at the maximum interest rate allowed by law, attorney's fees, costs of court, and all other and further relief, general and special, at law and in equity, to which Plaintiffs may be justly entitled. Plaintiffs pray for general relief.

Respectfully submitted,

STEVEN E. THOMPSON & ASSOCIATES, P.C.



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ATTORNEY FOR THE PLAINTIFFS

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing instrument has been served upon counsel of record pursuant to the Texas Rules of Civil Procedure, via certified mail return receipt requested, hand delivery and/or facsimile on this the 23rd day of February 2006.

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