

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

ANTHONY LOOK, *et al.*,

Plaintiffs,

vs.

YGRENE ENERGY FUND, INC. *et al.*,

Defendants.

Case No. 3:17-cv-01258

**STIPULATED ESI DISCOVERY  
PROTOCOL**

1 Plaintiffs and Defendants, by and through their undersigned counsel, hereby stipulate and  
2 agree to this ESI Protocol (“Protocol”) setting forth the specifications that shall govern document  
3 production.

4 **1. PURPOSE AND SCOPE**

5 This Order will govern discovery of electronically stored information (“ESI”) in this case  
6 as a supplement to the Federal Rules of Civil Procedure, this Court’s Guidelines for the Discovery  
7 of Electronically Stored Information, and any other applicable orders and rules.

8 Nothing herein shall alter the parties’ respective rights or obligations under the Federal  
9 Rules of Civil Procedure. Nothing in this Protocol establishes any agreement regarding the  
10 subject matter or scope of discovery in this action, or the relevance or admissibility of any ESI or  
11 other document or thing. Nothing in this Protocol shall affect, in any way, a producing party’s  
12 right under the Federal Rules of Civil Procedure to seek or oppose reimbursement for costs  
13 associated with collection, review, and/or production of ESI. Nothing in this Protocol shall be  
14 interpreted to require disclosure of irrelevant information or ESI protected from discovery by the  
15 attorney-client privilege, work product doctrine, or any other applicable privilege or immunity.

16 **2. COOPERATION**

17 The parties are aware of the importance the Court places on cooperation and commit to  
18 cooperate in good faith throughout the matter consistent with this Court’s Guidelines for the  
19 Discovery of ESI.

20 **3. PRESERVATION**

21 The parties have discussed their preservation obligations and needs and agree that  
22 preservation of potentially relevant ESI will be reasonable and proportionate. To reduce the costs  
23 and burdens of preservation and to ensure proper ESI is preserved, the parties agree that:

- 24 a) Only ESI created or received between January 1, 2010 and the present will be  
25 preserved;
- 26 b) The parties have agreed on the types of ESI they believe should be preserved.
- 27 c) The parties have agreed that the total number of custodians per side for whom ESI  
28 will be preserved is 10, respectively. Custodians will be selected as follows:

1           1)       Custodians of Defendants' ESI: Defendants have already identified five  
2           custodians for whom they believe ESI should be preserved. The parties will  
3           identify up to five more custodians of Defendants' ESI for whom ESI should be  
4           preserved during the pendency of discovery. These additional five custodians will  
5           be identified no later than April 1, 2018 or three (3) months after Ygrene begins its  
6           rolling production of ESI, whichever is later.

7           2)       Custodians of Plaintiffs' ESI: Each Plaintiff will preserve ESI in accordance  
8           with this stipulation. The parties will identify up to four more custodians of  
9           Plaintiffs' ESI for whom ESI should be preserved during the pendency of  
10          discovery. These additional four custodians will be identified no later than April 1,  
11          2018.

12         d)       These data sources are not reasonably accessible because of undue burden or cost  
13         pursuant to Fed. R. Civ. P. 26(b)(2)(B) and ESI from these sources will be preserved but  
14         not searched, reviewed, or produced: backup media or other systems no longer in use that  
15         can no longer reasonably be accessed;

16         e)       Among the sources of data the parties agree are not reasonably accessible, the  
17         parties agree not to preserve the following: NONE.

18         f)       In addition to the agreements above, the parties agree data from these sources (a)  
19         could contain relevant information but (b) under the proportionality factors, should not be  
20         preserved: NONE.

21         **4.       SEARCH**

22         The parties shall meet and confer and reach agreement as to the method of searching, and  
23         the words, terms, and phrases to be used to locate and identify potentially responsive ESI. The  
24         parties shall also agree on the timing and conditions of any additional searches that may become  
25         necessary in the normal course of discovery. In lieu of identifying responsive ESI using the search  
26         terms and custodians/electronic systems as described above, a party may use a technology assisted  
27         review platform to identify potentially relevant documents and ESI.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**5. PRODUCTION FORMATS**

The parties agree to produce documents in  PDF, TIFF, native and/or paper file formats or any combination thereof as appropriate. If particular documents warrant a different format, the parties will cooperate to arrange for the mutually acceptable production of such documents. If the parties are unable to reach an agreement, the parties may present the dispute for judicial resolution regarding the form of production and any potential shifting of costs.

To the extent responding to a discovery request requires production of ESI contained in a database, the producing party may comply with the discovery request by generating a report in a reasonably usable and exportable electronic format. The parties agree not to degrade the searchability of documents as part of the document production process. Common system and program files as defined by the NIST library (which is commonly used by discovery vendors to exclude system and program files from document review and production) need not be processed, reviewed or produced. The parties shall meet and confer on any additional file types that also need not be processed, reviewed, or produced. Productions can be transferred by any appropriate and secure method agreed to by the parties.

**6. DOCUMENTS PROTECTED FROM DISCOVERY**

a) Pursuant to Fed. R. Evid. 502(d), the production of a privileged or work-product-protected document, whether inadvertent or otherwise, is not a waiver of privilege or protection from discovery in this case or in any other federal or state proceeding. For example, the mere production of privileged or work-product-protected documents in this case as part of a mass production is not itself a waiver in this case or in any other federal or state proceeding.

b) The parties have agreed upon a “clawback” process pursuant to Fed. R. Civ. P. 26(b)(5) whereby the producing party may clawback any document that is produced, inadvertently or otherwise, and that is protected from discovery by the attorney-client privilege, work product doctrine, or other privilege. The producing party will give notice of its intent to clawback documents by identifying the documents by Bates number as soon as reasonably practical. Upon receipt of such notice, the receiving party will return all

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

documents identified by the producing party and simultaneously delete all copies thereof.

c) Communications involving trial counsel that post-date the filing of the complaint need not be placed on a privilege log. Communications may be identified on a privilege log by category, rather than individually, if appropriate.

**7. MODIFICATION**

This Stipulated Order may be modified by a Stipulated Order of the parties or by the Court for good cause shown.

**IT IS SO STIPULATED**, through Counsel of Record.

Dated: January 30, 2018 /s/ Jeffrey D. Kaliel  
\_\_\_\_\_  
Counsel for Plaintiff

Dated: January 30, 2018 /s/ Fredrick S. Levin  
\_\_\_\_\_  
Counsel for Defendant

**IT IS ORDERED** that the forgoing Agreement is approved.

Dated: February 8, 2018   
\_\_\_\_\_  
UNITED STATES MAGISTRATE JUDGE