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11 Attorneys for the United States Environmental
Protection Agency and Jared Blumenfeld,
12 Regional Administrator

13 IN THE UNITED STATES DISTRICT COURT

14 EASTERN DISTRICT OF CALIFORNIA

15 SOUTHERN CALIFORNIA ALLIANCE OF
PUBLICLY OWNED TREATMENT
16 WORKS, and CENTRAL VALLEY CLEAN
WATER ASSOCIATION,

17 Plaintiffs,

18 v.

19 UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY; JARED
20 BLUMENFELD, REGIONAL
ADMINISTRATOR, UNITED STATES
21 ENVIRONMENTAL PROTECTION
AGENCY, REGION IX; and DOES 1 to 10,

22 Defendants.
23

CASE NO. 2:14-cv-01513 MCE-DAD

**EPA'S EX PARTE REQUEST AND ORDER
TO CONTINUE PLAINTIFFS' MOTION TO
COMPEL RE: ADMINISTRATIVE RECORD**
[Dkt 36]

Date: February 19, 2015
Time: 2:00 p.m.
Place: Courtroom 7, 14th Floor
Judge: Hon. Morrison C. England

24 Pursuant to Local Rule 144(c), Defendants United States Environmental Protection Agency and
25 Regional Administrator Jared Blumenfeld (collectively, "EPA") respectfully request a two (2) week
26 continuance of the hearing on Plaintiffs' motion to compel Defendants to complete the administrative
27 record [Dkt 36] from February 19, 2015 to March 5, 2015, to be heard concurrently with the parties'
28 pending summary judgment motions [Dkt 25, 30]. EPA requests the continuance to allow it sufficient

1 time to carefully consider and review Plaintiffs' motion. Further, because EPA requests continuing
2 Plaintiffs' motion to the same date for which the parties' pending summary judgment motion are
3 currently scheduled, there are no concerns regarding the availability of counsel or the parties for March
4 5, 2015.

5 To prevent any prejudice to Plaintiffs Southern California Alliance of Publicly Owned Treatment
6 Works ("SCAP") and Central Valley Clean Water Association ("CVCWA"), EPA requests the briefing
7 schedule below to provide more time for Plaintiffs' reply than would be provided under Local Rule
8 230(d).¹

9	- EPA's response to motion (filing deadline)	2/17/2015
10	- Plaintiffs' reply (filing deadline)	2/26/2015
11	- Hearing:	3/5/2015

12 A stipulation extending time unfortunately could not be reached, and EPA informed Plaintiffs
13 that it would be filing this ex parte request. *See* L.R. 144(c). Declaration of Chi Soo Kim, ¶ 2. Counsel
14 for Plaintiffs declined EPA's request that the parties enter a stipulation, stating that "Plaintiffs had
15 considered noticing the motion to be heard together with the cross-motions, but opted for the earlier
16 hearing date in order for the record to be prepared and available by the time of the hearing on the
17 merits." *Id.* Because Plaintiffs filed and noticed their motion to compel two (2) weeks before the
18 parties' dispositive motion hearing, it is unlikely that the administrative record issues would have been
19 resolved by the Court before the summary judgment hearing two weeks later.

20 Throughout this litigation, EPA counsel has been cooperative and worked professionally with
21 counsel for Plaintiffs, and counsel have a positive working relationship. Kim Decl., ¶ 3. Though not
22 required to do so, EPA proactively proposed to provide Plaintiffs with a draft index of the administrative
23 record, confer with Plaintiffs regarding the administrative record, and jointly agree and propose to the
24 Court a schedule for the administrative record and parties' dispositive motions. Kim Decl., ¶ 3; *see* Dkt
25 18, 19, 21.² The purpose of meeting and conferring regarding the administrative record and jointly

27 ¹ EPA's proposed briefing schedule provides Plaintiffs with 10 days, rather than 7 days, after
the filing of EPA's response for Plaintiffs' reply.

28 ² EPA counsel also took the laboring oar by drafting and filing all of the parties' joint filings
and requests, again taking a proactive and cooperative role to work with Plaintiffs. Kim Decl., ¶ 3; *see*

1 agreeing to and proposing this schedule was to resolve issues regarding the administrative record early.
2 Kim Decl., ¶ 3. The parties met and conferred multiple times over approximately four (4) weeks
3 regarding the administrative record. Kim Decl., ¶ 3. The administrative record was lodged on October
4 15, 2014. [Dkt 22, 23] Plaintiffs did not file their motion to compel regarding the administrative record
5 until over three (3) months later on January 20, 2014, concurrently with Plaintiffs' last brief on the
6 parties' motions for summary judgment and after EPA had already filed its opposition and cross-motion
7 one month earlier. [Dkt 36, 30] Plaintiffs also did not provide EPA with any notice that it would be
8 filing this motion to compel, nor did the parties' jointly proposed briefing schedule contemplate or
9 provide any additional time for EPA to respond to such a motion during the time already allotted for
10 EPA's reply brief. Kim Decl., ¶ 2. EPA does not assert that Plaintiffs are prohibited from challenging
11 the administrative record, but merely requests a brief continuance to allow it sufficient time to carefully
12 consider and review Plaintiffs' motion.

13 Dated: February 4, 2015

Respectfully submitted,

14 BENJAMIN B. WAGNER
15 United States Attorney

16 /s/ Chi Soo Kim

17 CHI SOO KIM
Assistant United States Attorney

18 Dated: February 4, 2015


/s/ Leslie M. Hill

19 LESLIE M. HILL
Environmental Defense Section

20 **ORDER**

21 **IT IS SO ORDERED.**

22 Dated: February 11, 2015

23
24 
25 MORRISON C. ENGLAND, JR., CHIEF JUDGE
26 UNITED STATES DISTRICT COURT

27
28 Dkt 18, 19, 21. The Court approved the parties' stipulated schedule. [Dkt 21]