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9 Attorneys for Plaintiffs

10  
 11 **IN THE UNITED STATES DISTRICT COURT**  
 12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
 13 **SAN FRANCISCO DIVISION**

14 **THE SIERRA CLUB and ENVIRONMENTAL**  
 15 **INTEGRITY PROJECT,**

16 Plaintiffs,

17 vs.

18 **UNITED STATES ENVIRONMENTAL**  
 19 **PROTECTION AGENCY,**

20 Defendant.

Case No. C-11-0846-MEJ

**PLAINTIFFS' UNOPPOSED MOTION TO  
 EXTEND THE SUMMARY JUDGMENT  
 REPLY BRIEF DEADLINE;  
 DECLARATION OF COUNSEL;  
~~[PROPOSED]~~ ORDER**

21 Pursuant to this Court's Order granting Defendant's Second Unopposed Administrative Motion  
 22 To Augment Briefing Schedule, Dkt. 31, Plaintiffs' summary judgment reply brief is due no later than  
 23 April 27, 2012. Pursuant to Federal Rule of Civil Procedure 6(b), Plaintiffs now move for a modest en-  
 24 largement of time until Tuesday, May 1, 2012, in which to file its summary judgment reply brief. This  
 25 motion is supported by the Declaration of Counsel incorporated into this document. *Infra*.

26 A district court's decision regarding an extension of time lies well within its discretion. *United*  
 27 *States ex rel. Hawaiian Rock Prods. Corp. v. A.E. Lopez Enters.*, 74 F.3d 972, 976 (9<sup>th</sup> Cir.1996) (estab-  
 28

1 lishing that such a decision will not be disturbed absent an abuse of discretion).

2 For the following reasons, the Plaintiffs assert good cause exists to grant this request for an en-  
3 largement of time.

4 **1.** Unanticipated conflicts of schedule have recently arisen for Plaintiffs' counsel that  
5 necessitate additional time to prepare Plaintiffs' reply brief. Namely, Plaintiffs' coun-  
6 sel, David Bahr, on April 25, 2012, Mr. Bahr was unexpectedly called upon by a pre-  
7 existing client to develop and implement a strategy to promptly intervene in a federal  
8 "Reverse FOIA" case in which a complaint and motion for preliminary injunction  
9 were filed on April 23, 2012. Because the motion to intervene has not yet been filed,  
10 attorney Bahr is not at liberty to provide additional information regarding this devel-  
11 opment. Attorney Bahr was also unexpectedly called upon to develop and submit two  
12 substantial administrative filings seeking review and reversal of agency decisions is-  
13 sued under the federal Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.*;  
14 (1) *Little Hocking Water District v. U.S.E.P.A.*, # HQ-FOI-01571-10 (filed April 25,  
15 2012); (2) *Sierra Club v. Internal Revenue Service*, # F12074-0125 (filed April 16,  
16 2012). Additionally, Mr. Bahr has also been required to review and analyze volumi-  
17 nous document production in a FOIA case in support of a case status report that is due  
18 May 1, 2012 in *National Wildlife Federation v. United States Federal Emergency*  
19 *Management Agency*, Case No. 2:11-cv-00512-JLR (W.D.Wash.). Finally, Mr. Bahr  
20 has been engaged in preparing a petition for cost and attorney fees and coordinating  
21 supporting documentation that is due May 4, 2012 in *Audubon Society of Portland v.*  
22 *United States Natural Resources Conservation Service*, Case No. 3:10-cv-01205-H  
23 (D.Or.).

24 **2.** This request will not unreasonably delay final disposition of this case. The summary  
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1 judgment argument date was recently continued by a week until May 17, 2012. Dkt. #  
2 38.

- 3 **3.** No party will be disadvantaged by this enlargement of time. If this motion is granted,  
4 with the recent continuance of the argument date, the parties and the Court will actu-  
5 ally have more time between the filing of the reply brief and the hearing (16 days)  
6 than under the schedule previously approved by the Court (13 days).  
7  
8 **4.** This is Plaintiffs' first request for an enlargement of time in this case.  
9  
10 **5.** This request for enlargement is made in good faith and for no improper purpose.  
11  
12 **6.** On April 26, 2012, undersigned counsel conferred by email with Defendant's counsel  
13 regarding this motion. On April 27, 2012, Defendant notified the undersigned counsel  
14 that it does not oppose this request.

15 WHEREFORE, Defendant respectfully requests the Court to enlarge Plaintiffs' time to file their  
16 summary judgment reply brief until May 1, 2012.

17 Respectfully submitted for the Court's consideration, this 27<sup>th</sup> day of April, 2012.

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### 25 DECLARATION OF COUNSEL

- 26 **1.** My name is David Bahr. I am plaintiffs' lead counsel in this case. This declaration is based on  
27 my personal knowledge and experience.  
28  
**2.** Unanticipated conflicts have recently arisen in my schedule that necessitate additional time to  
prepare Plaintiffs' reply brief. Namely, on April 25, 2012, I was unexpectedly called upon by a preex-

1 isting client to develop and implement a strategy to promptly intervene in a federal “Reverse FOIA”  
2 case in which a complaint and motion for preliminary injunction were filed on April 23, 2012. Because  
3 the motion to intervene has not yet been filed, I am not at liberty to provide additional information re-  
4 garding this development. I was also unexpectedly called upon to develop and submit two substantial  
5 administrative filings seeking review and reversal of agency decisions issued under the federal Freedom  
6 of Information Act (“FOIA”), 5 U.S.C. § 552, *et seq.*; (1) *Little Hocking Water District v. U.S.E.P.A.*, #  
7 HQ-FOI-01571-10 (filed April 25, 2012); (2) *Sierra Club v. Internal Revenue Service*, # F12074-0125  
8 (filed April 16, 2012). Additionally, I have also been required to review and analyze voluminous docu-  
9 ment production in a FOIA case in support of a case status report that is due May 1, 2012 in *National*  
10 *Wildlife Federation v. United States Federal Emergency Management Agency*, Case No. 2:11-cv-  
11 00512-JLR (W.D.Wash.). Finally, I have been engaged in preparing a petition for cost and attorney fees  
12 and coordinating supporting documentation that is due May 4, 2012 in *Audubon Society of Portland v.*  
13 *United States Natural Resources Conservation Service*, Case No. 3:10-cv-01205-H (D.Or.).

14  
15  
16 **3.** This is Plaintiffs’ first request for an enlargement of time in this case.

17 **4.** This request for enlargement is made in good faith and for no improper purpose.

18 **5.** On April 26, 2012, I conferred by email with Defendant’s counsel regarding this motion.

19 On April 27, 2012, Defendant notified me that it does not oppose this request.

20 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true  
21 and correct.

22 Executed this 26<sup>th</sup> day of April, in Eugene, Oregon.

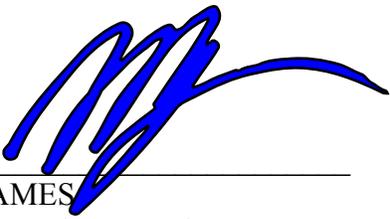
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1 **~~[PROPOSED]~~ ORDER**

2 This Court, having considered Plaintiffs' Unopposed Motion to Extend the Summary Judgment  
3 Reply Brief Deadline, and after considering the moving papers, arguments of counsel, and all other mat-  
4 ters presented to the Court, HEREBY FINDS AND ORDERS THAT:

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6 Plaintiffs' summary judgment reply brief shall be due no later than May 1, 2012.

7  
8 **IT IS SO ORDERED**, this 27th day of April, 2012.

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13 MARIA-ELENA JAMES  
14 Chief United States Magistrate Judge

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25  
26 Presented by:

27 s/ David Bahr  
28 David Bahr (Oregon Bar No. 901990)  
Plaintiffs' counsel