

1 David A. Bahr (Oregon Bar No. 90199)  
 2 Bahr Law Offices, P.C.  
 3 1035 ½ Monroe Street  
 4 Eugene, OR 97402  
 (541) 556-6439  
[davebahr@mindspring.com](mailto:davebahr@mindspring.com)

5 Kristin Henry (California Bar. No. 220908)  
 6 Sierra Club Environmental Law Program  
 7 85 Second St., 2nd Floor  
 8 San Francisco, CA 94105  
 (415) 977-5716  
[Kristin.Henry@Sierraclub.org](mailto:Kristin.Henry@Sierraclub.org)

9 Attorneys for Plaintiffs

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

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

15 Plaintiffs,

16 vs.

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

19 Defendant.

Case No. C-11-0846-MEJ

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

20 Pursuant to this Court’s Order granting Plaintiffs’ Unopposed Motion To Extend The Summary  
 21 Judgment Reply Brief Deadline, Dkt. 40, Plaintiffs’ summary judgment reply brief is due today, May 1,  
 22 2012. Pursuant to Federal Rule of Civil Procedure 6(b), all Parties now move for a modest enlargement  
 23 of time until Friday, May 4, 2012, in which Plaintiffs are to file their summary judgment reply brief.  
 24

25 This 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 all Parties assert good cause exists to grant this request for an en-  
3 largement of time.

- 4 **1.** By email with a date/time stamp of 10:04 am, May 1, 2012, Plaintiffs' counsel David  
5 Bahr, received notice from plaintiff Sierra Club, that it had received a large volume of  
6 records released by EPA in response to the FOIA request that is the subject of this  
7 suit.
- 8 **2.** Plaintiffs' counsel had been entirely unaware that this release was pending.
- 9 **3.** In a telephone conversation with Mr. Bahr, EPA's trial counsel, Abraham Simmons,  
10 stated that he was similarly unaware that this release was pending.
- 11 **4.** Based on counsels' initial review of the EPA's cover letter and a declaration of a Lu-  
12 minant employee, it appears that this release constitutes 183 pdf files totaling ap-  
13 proximately 6,000 pages of material.
- 14 **5.** Based on counsels' initial review of the EPA's cover letter and a declaration of a  
15 Luminant employee, it appears that the information in at least some of these docu-  
16 ments is responsive to claims and defenses asserted by the Parties in this case.
- 17 **6.** The Parties require a brief period to evaluate the contents of the recently released re-  
18 cords and Plaintiffs require time in which to evaluate their relevance to arguments to  
19 be presented in their summary judgment reply.
- 20 **7.** This request will not unreasonably delay final disposition of this case. The summary  
21 judgment argument date was recently continued by a week until May 17, 2012. Dkt. #  
22 38.
- 23 **8.** No party will be disadvantaged by this enlargement of time. If this motion is granted,  
24 with the recent continuance of the argument date, the parties and the Court will actu-  
25  
26  
27  
28

1 ally have same amount of time between the filing of the reply brief and the hearing as  
2 under the schedule previously approved by the Court, dkt. # 31, (13 days).

3 **9.** This is the Parties' first joint request for an enlargement of time in which to brief  
4 summary judgment in this case.

5 **10.** This request for enlargement is made in good faith and for no improper purpose.

6 WHEREFORE, the Parties respectfully request the Court to enlarge Plaintiffs' time to file their  
7 summary judgment reply brief until May 4, 2012.

8 Respectfully submitted for the Court's consideration, this 1<sup>st</sup> day of May, 2012.

9 s/ David Bahr

10 David Bahr (Oregon Bar No. 901990)  
11 Bahr Law Offices, P.C.  
12 1035 ½ Monroe Street  
13 Eugene, OR 97402  
14 (541) 556-6439  
[davebahr@mindspring.com](mailto:davebahr@mindspring.com)

15 s/ Abraham A. Simmons

16 ABRAHAM A. SIMMONS  
17 Assistant United States Attorney  
18 Attorney for the Federal Defendants  
19 450 Golden Gate Avenue, 9th Floor  
20 San Francisco, California 94102-3495  
21 Telephone: (415) 436-7264  
22 Facsimile: (415) 436-6748  
23 Email: [abraham.simmons@usdoj.gov](mailto:abraham.simmons@usdoj.gov)

---

### DECLARATION OF COUNSEL

24 **1.** My name is David Bahr. I am Plaintiffs' lead counsel in this case. This declaration is based on  
25 my personal knowledge and experience.

26 **2.** By email with a date/time stamp of 10:04 am, May 1, 2012, I received notice from plaintiff Si-  
27 erra Club, that it had received a large volume of records released by EPA in response to the FOIA re-  
28

1 quest that is the subject of this suit.

2 **3.** I had been entirely unaware that this release was pending.

3 **4.** In a telephone conversation with me, EPA's counsel trial counsel, Abraham Simmons, stated that  
4 he was similarly unaware that this release was pending.

5 **5.** Based on counsels' initial review of the EPA's cover letter and a declaration of a Luminant em-  
6 ployee, it appears that this release constitutes 183 pdf files totaling approximately 6,000 pages of mate-  
7 rial.

8 **6.** Based on counsels' initial review of the EPA's cover letter and a declaration of a Luminant em-  
9 ployee, it appears that the information in at least some of these documents is responsive to claims and  
10 defenses asserted by the Parties in this case.

11 **7.** The Parties require a brief period to evaluate the contents of the recently released records and  
12 Plaintiffs require time in which to evaluate their relevance to arguments to be presented in their sum-  
13 mary judgment reply.

14 **8.** This is the Parties' first joint request for an enlargement of time in which to brief sum-  
15 mary judgment in this case.

16 **9.** This request for enlargement is made in good faith and for no improper purpose.

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

19 Executed this 1<sup>st</sup> day of May, 2012, in Eugene, Oregon.

20 s/ David Bahr

21 David Bahr (Oregon Bar No. 901990)

22 Bahr Law Offices, P.C.

23 1035 ½ Monroe Street

24 Eugene, OR 97402

25 (541) 556-6439

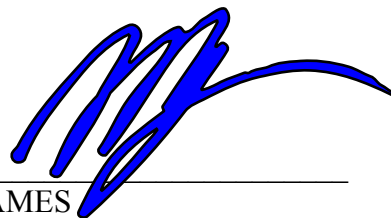
26 [davebahr@mindspring.com](mailto:davebahr@mindspring.com)

1 ~~PROPOSED~~ ORDER

2 This Court, having considered the Parties' Joint Motion To Extend The Summary Judgment Re-  
3 ply Brief Deadline, and after considering the moving papers, arguments of counsel, and all other matters  
4 presented to the Court, HEREBY FINDS AND ORDERS THAT:

5  
6 Plaintiffs' summary judgment reply brief shall be due no later than May 4, 2012., **by Noon.**

7  
8 **IT IS SO ORDERED**, this 1st day of May, 2012.

9  
10  
11 

12 \_\_\_\_\_  
13 MARIA-ELENA JAMES  
14 Chief United States Magistrate Judge

15  
16  
17  
18  
19  
20 Presented by:

21 s/ David Bahr  
22 David Bahr (Oregon Bar No. 901990)  
23 Plaintiffs' counsel

24 s/ Abraham A. Simmons  
25 ABRAHAM A. SIMMONS  
26 Assistant United States Attorney  
27 Attorney for the Federal Defendants  
28