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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JEFF ANDERSON, ET AL.,

Plaintiffs.

v.

GINA McCARTHY, ET AL.,

Defendants.

No. C 16-00068 WHA

**ORDER (1) REQUIRING IN
CAMERA REVIEW OF
DOCUMENTS; AND (2)
DENYING LEAVE TO
CONDUCT LIMITED
DISCOVERY**

_____ /

The Court is in receipt of plaintiffs’ motion to compel completion of the administrative record and production of a privilege log. This order concludes that this issue is best decided in the context of the overall motion for summary judgment. The current deadline for filing summary judgment motions of September 16, 2016, will remain in place. In their summary judgment briefs, plaintiffs shall lay out any alleged shortfalls in the administrative record. Then the Court will be in a position to review any alleged gaps in the administrative record in the context of the issues to be decided.

By **NOON ON OCTOBER 4, 2016**, the EPA shall submit for in camera review and under seal the documents that relate to the development of the guidance that are *not* a part of the administrative record, including pre-decisional and deliberative documents. The Court will then determine the extent to which these documents should be part of the administrative record.

As to plaintiff’s motion for limited discovery on the failure to act claim, the motion for summary judgment should be based on the administrative record. In the course of briefing,

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counsel can explain why further discovery is needed (even though discovery is the exception rather than the rule with respect to review of agency action). The motion for limited discovery is therefore **DENIED WITHOUT PREJUDICE**.

This order does not reach the issue of whether it was appropriate to file this motion as an administrative motion under Local Rule 7-11.

No further extensions shall be granted.

IT IS SO ORDERED.

Dated: September 7, 2016.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE