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HONORABLE BARBARA J. ROTHSTEIN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SIERRA CLUB, *et al.*,)
)
Plaintiffs,)
)
and)
)
THE SPOKANE TRIBE OF INDIANS,)
)
Plaintiff-Intervenor,)
)
v.)
)
REGIONAL ADMINISTRATOR OF THE)
ENVIRONMENTAL PROTECTION)
AGENCY, *et al.*,)
)
Defendants,)
)
and)
)
SPOKANE COUNTY; KAISER)
ALUMINUM WASHINGTON LLC; and)
STATE OF WASHINGTON)
DEPARTMENT OF ECOLOGY,)
)
Defendant-Intervenors.

No. C11-1759BJR

STIPULATED JOINT MOTION TO
MODIFY SUMMARY JUDGMENT
BRIEFING SCHEDULE TO ALLOW
SETTLEMENT DISCUSSIONS, AND
ORDER

1
2 Defendants the Regional Administrator of the Environmental Protection Agency, et al.
3 (collectively “EPA”), Plaintiffs Sierra Club and Center for Environmental Law & Policy
4 (collectively “Sierra Club/CELP”), and Plaintiff-Intervenor Spokane Tribe of Indians jointly
5 submit this motion to extend by 137 days the existing dates set forth in the Court’s order (Dkt
6 245) for briefing on Plaintiffs’ motion for summary judgment and on EPA’s and the Intervenor-
7 Defendants’ prospective cross-motions for summary judgment, to allow for settlement
8 discussions and, if a proposed settlement can be reached, to obtain necessary approvals to enter
9 that agreement. Defendant-Intervenor State of Washington, Department of Ecology, Defendant-
10 Intervenor Spokane County, and Defendant-Intervenor Kaiser Aluminum Washington LLC,
11 stipulate to the relief requested by this motion.
12

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14 The grounds for this stipulated joint motion and proposed modified briefing schedule are
15 as follows:
16

17 1) Plaintiffs Sierra Club/CELP filed on July 2, 2021, a motion for summary
18 judgment on their claim under the Clean Water Act that EPA has a nondiscretionary duty to issue
19 a total maximum daily load (“TMDL”) for polychlorinated biphenyls (“PCBs”) for the Spokane
20 River, and on their claim under the Administrative Procedure Act that challenges EPA’s Plan for
21 addressing PCBs in the Spokane River. Doc. 238. Plaintiff-Intervenor the Spokane Tribe joined
22 that motion on July 6, 2021. Doc. 243.
23

24 2) On July 16, 2021, the Parties filed a stipulated joint motion that set out a
25 comprehensive schedule for briefing on Plaintiffs’ summary judgment motion and on the
26 prospective cross-motions for summary judgment by EPA and the three Defendant-Intervenors.
27 Doc. 244. The Court granted the stipulated joint motion. Doc. 245. Under the Court’s order,
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29

1 EPA's and the Defendant-Intervenors' opposition briefs and cross-motions for summary
 2 judgment are due August 20, 2021.

3 3) Based on recent discussions between EPA, Plaintiffs, and the Tribe, these parties
 4 believe that it may be possible to reach a settlement of this case within the next 137 days.
 5 Accordingly, EPA, Plaintiffs, and the Tribe request that the dates in the briefing schedule entered
 6 by the Court be extended by 137 days, to allow for settlement discussions and, if a proposed
 7 settlement can be reached, to have that settlement approved by the relevant parties. Deferring
 8 briefing at this time would facilitate those discussions, both by preserving the resources
 9 otherwise spent on briefing, and by avoiding briefing that may be counter-productive to efforts to
 10 reach an agreement. Granting this extension may also preserve the resources of the Court, by
 11 averting the need to adjudicate the claims in this case if a settlement is reached.
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 14 4) Under this proposal, only the dates in the Court's existing briefing schedule
 15 would be modified, by extending each of the dates by 137 days. As so modified, this proposed
 16 schedule is as follows:
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- | | | |
|----|---|---------------|
| 18 | 1.A. EPA's Opposition to Plaintiffs' Motion for SJ and
Cross-Motion for SJ (limited to 30 pages) | Jan. 4, 2022 |
| 19 | 20 | |
| 20 | 1.B. Oppositions to Plaintiffs' Motion for SJ and
Cross-Motions for SJ, by Spokane County, Kaiser Aluminum,
and the State of Washington
(each limited to 20 pages) | Jan. 4, 2022 |
| 21 | 22 | |
| 22 | 2.A. Plaintiffs' Consolidated Opposition to the Cross-Motions
for SJ and Reply in Support of Plaintiffs' Motion for SJ
(limited to 30 pages) | Jan. 25, 2022 |
| 23 | 24 | |
| 24 | 2.B. Spokane Tribe's Consolidated Opposition to the Cross-Motions
for SJ and Reply in Support of Plaintiffs' Motion for SJ
(limited to 20 pages) | Jan. 25, 2022 |
| 25 | 26 | |
| 26 | 27 | |
| 27 | 3.A. EPA's Reply in Support of its Cross-Motion for SJ
(limited to 20 pages) | Feb 8, 2022 |
| 28 | 29 | |

1 3.B. Replies in Support of EPA's Cross-Motion for SJ, by Spokane County,
2 Kaiser Aluminum, and the State of Washington
3 (each limited to 10 pages)

Feb 8, 2022

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6 **ORDER**

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8 IT IS SO ORDERED, on this 18th day of August 2021.

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12 Barbara Jacobs Rothstein
13 U.S. District Court Judge
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1 Respectfully submitted by:

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