

Honorable James L. Robart

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SOUND ACTION, FRIENDS OF THE)
SAN JUANS, AND WASHINGTON)
ENVIRONMENTAL COUNCIL,)
)
Plaintiffs,)
)
v.)
)
UNITED STATES ARMY CORPS OF)
ENGINEERS,)
)
Defendant.)

No. 18-cv-00733-JLR

STIPULATED MOTION AND
~~PROPOSED~~ ORDER DEFERRING
FILING OF THE COMBINED JOINT
STATUS REPORT AND DISCOVERY
PLAN

Note on Motions Calendar: November
5, 2018

Plaintiffs Sound Action, et al. ("Sound Action"), and Defendant United States Army
Corps of Engineers (the "Corps") (collectively the "Parties") request that the Court defer the date
for the Parties to file the Combined Joint Status Report and Discovery Plan required by the
Court's order (Doc. No. 14), until 14 days after the Court rules on the Corps' pending motion to
dismiss claim one of the Complaint for lack of jurisdiction (Doc. No. 13). The grounds for this

Stipulated Motion are as follows:

STIPULATED MOTION AND [PROPOSED]
ORDER EXTENDING TIME - 1

Case No. 18-cv-00733-JLR

David J. Kaplan.
United States Department of Justice
Environmental Defense Section
P.O. Box 7611
Washington D.C. 20044

29

1 1. On May 21, 2018, Sound Action filed a two-count Complaint against the Corps
2 under the Administrative Procedure Act that challenges an alleged final agency action by the
3 Corps pertaining to the boundary of shoreline areas regulated under the Clean Water Act in the
4 Corps' Seattle District and that alleges the Corps failed to respond within a reasonable time to an
5 administrative petition regarding the Clean Water Act.
6

7 2. On September 28, 2018, the Corps filed a Motion to Dismiss Claim One For Lack
8 of Jurisdiction, Doc. No. 13. Briefing on this dispositive motion, which is noted for November
9 15, 2018, is ongoing. Doc. No. 16.
10

11 3. The Court issued its initial scheduling order (Doc. No. 14) on October 2, 2018.
12 That order requires, among other things, that the Parties file their Combined Joint Status Report
13 and Discovery Plan by November 6, 2018. Deferring that filing until 14 days after the Court
14 rules on the Corps' pending Motion to Dismiss makes sense because the scheduling issues that
15 the Parties would need to address in that filing will depend upon, and will be significantly
16 impacted by, how the Court rules on the Corps' Motion to Dismiss. Once that ruling is issued,
17 the Parties will be in a position to address the scheduling matters in the Combined Joint Status
18 Report and Discovery Plan for the efficient disposition of this case.
19

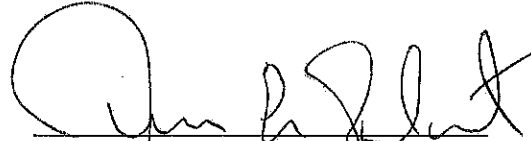
20 4. Deferring filing of the Combined Joint Status Report and Discovery Plan will not
21 delay the ultimate resolution of this case or a future trial date. The Parties agree that any judicial
22 review on the merits in this case must be based upon an administrative record for judicial review;
23 thus, depending upon how the Court rules on the Corps' pending Motion to Dismiss, any merits
24 review of the claims would be appropriately resolved through motions for summary judgment.
25 Accordingly, selecting a trial date will not be necessary in this case, and deferring the date for
26
27
28

1 filing the Status Report and Discovery Plan will not unduly delay the ultimate resolution of this
2 case.

3 WHEREFORE, Sound Action and the Corps respectfully request that the Court extend
4 the date for the Parties to file their Combined Joint Status Report and Discovery Plan required by
5 the Court's initial order (Doc. No. 14) to 14 days after the Court rules on the Corps' pending
6 Motion to Dismiss (Doc. No. 13).
7

8
9
10 ORDER

11
12 IT IS SO ORDERED, on this 6th day of November, 2018.

13
14
15 
16 United States District Judge
17
18
19
20
21
22
23
24
25
26
27
28

29 STIPULATED MOTION AND [PROPOSED]
ORDER EXTENDING TIME - 3

Case No. 18-cv-00733-JLR

David J. Kaplan.
United States Department of Justice
Environmental Defense Section
P.O. Box 7611
Washington D.C. 20044

1 Respectfully submitted by:

2 /S/ David J. Kaplan

3 David J. Kaplan

4 Attorneys for Federal Defendants

5 United States Department of Justice

6 Environmental Defense Section

7 P.O. Box 7611

8 Washington, DC 20044

9 (202) 514-0997

10 David.kaplan@usdoj.gov

11 /S/ Anna Sewell

12 Anna Sewell, WSBA # 48736

13 Earthjustice

14 1625 Massachusetts Avenue NW

15 Suite 702

16 Washington, DC 20036

17 202-667-4500

18 asewell@earthjustice.org

19
20
21
22
23
24
25
26
27
28
29 STIPULATED MOTION AND [PROPOSED]
ORDER EXTENDING TIME - 4

Case No. 18-cv-00733-JLR

David J. Kaplan,
United States Department of Justice
Environmental Defense Section
P.O. Box 7611
Washington D.C. 20044

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

CERTIFICATE OF SERVICE

I hereby certify that the foregoing filing was electronically filed with the Clerk of the Court on November 5, 2018, using the Court's electronic filing system, which will send notification of said filing to the attorneys of record that have, as required, registered with the Court's system.

/S/ David Kaplan

STIPULATED MOTION AND [PROPOSED]
ORDER EXTENDING TIME - 5

Case No. 18-cv-00733-JLR

David J. Kaplan,
United States Department of Justice
Environmental Defense Section
P.O. Box 7611
Washington D.C. 20044