

JULIA A. OLSON (OR Bar 062230)
JuliaAOlson@gmail.com
WILD EARTH ADVOCATES
1216 Lincoln Street
Eugene, OR 97401
Tel: (415) 786-4825

ANDREA RODGERS (OR Bar 041029)
Andrearodgers42@gmail.com
Law Offices of Andrea K. Rodgers
3026 NW Esplanade
Seattle, WA 98117
Tel: (206) 696-2851

PHILIP L. GREGORY (*pro hac vice*)
pgregory@gregorylawgroup.com
Gregory Law Group
1250 Godetia Drive
Redwood City, CA 94062
Tel: (650) 278-2957

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

KELSEY CASCADIA ROSE JULIANA;
XIUHTEZCATL TONATIUH M., through his
Guardian Tamara Roske-Martinez; et al.

Plaintiffs,

v.

The UNITED STATES OF AMERICA;
DONALD TRUMP, in his official capacity as
President of the United States; et al.,

Defendants.

Case No.: 6:15-cv-01517-TC

**PLAINTIFFS' MOTION FOR
EXTENSION OF TIME TO FILE
RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION FOR
JUDGMENT ON THE PLEADINGS**

EXPEDITED HEARING REQUESTED

PLAINTIFFS' MOTION FOR EXTENSION OF TIME

LR 7-1 CERTIFICATION

The undersigned certifies that the parties have conferred regarding this Motion for an extension of time to file a response in opposition to Defendants’ Motion for Judgment on the Pleadings, but have been unable to reach agreement. Defendants would agree to an extension of time until June 1, 2018, but Defendants oppose the request for extension of time sought herein.¹ See Declaration of Julia A. Olson in Support of Plaintiffs’ Motion for Extension of Time to File Response in Opposition to Defendants’ Motion for Judgment on the Pleadings (“Olson Dec.”), ¶ 3.

MOTION

Pursuant to this Court’s May 14, 2018 request, prior to telephonic oral argument scheduled for May 23, 2018, counsel for the parties will be submitting a joint letter setting forth their respective positions regarding the briefing schedule for Defendants’ Motion for Judgment on the Pleadings, ECF No. 195 (“Defendants’ Rule 12(c) Motion”). In the joint letter, Plaintiffs will set forth their position that: (1) this Court has already decided Issue II of Defendants’ Rule 12(c) Motion (whether Plaintiffs’ claims must be pled as APA claims) and (2) the Court has discretion under Federal Rule of Civil Procedure 12 to defer until trial substantive briefing on and determination of Issues I and III of Defendants’ Motion (the propriety of relief against the President and whether relief generally would implicate separation of powers concerns, respectively).

¹ Pursuant to Local Rule 83-8(a), “[c]ounsel must cooperate with each other, consistent with the interests of their clients, in all phases of the litigation and be courteous in their dealings with each other, including matters relating to scheduling and timing” LR 83-8, Cooperation Among Counsel.

In the event that this Court does not defer Issues I and III and find that Issue II was already decided, Plaintiffs' response to Defendants' Motion would be due on May 23, 2018, the same day scheduled for telephonic oral argument and resolution of these issues. Therefore, consistent with this Court's May 16, 2018 correspondence to counsel, Plaintiffs hereby respectfully move the Court for an extension of time until June 29, 2018 to file their response in opposition to Defendants' Motion for Judgment on the Pleadings. Pursuant to Federal Rule of Civil Procedure 6(b)(1)(A), this Court may grant extensions of time for good cause shown so long as a motion for extension is filed prior to the relevant deadline.² The grounds for Plaintiffs' motion are as follows:

1. Defendants filed their Answer to Plaintiffs' First Amended Complaint on January 13, 2017. ECF No. 98. Defendants filed their Motion for Judgment on the Pleadings on May 9, 2018. Defendants have had approximately sixteen months over which to prepare and file their Motion for Judgment on the Pleadings. In comparison to this sixteen-month period, Plaintiffs respectfully request a modest extension of time of approximately five weeks, for preparation and filing of their response in opposition.
2. Pursuant to the Court's April 23, 2018 Order, Plaintiffs are actively engaged in and devoting substantial resources to concluding discovery and preparing for the trial date set for October 29, 2018. Olson Dec. ¶¶ 4-5; Declaration of Philip L. Gregory in Support of Plaintiffs' Motion for Extension of Time to File Response in Opposition to Defendants' Motion for Judgment on the Pleadings ("Gregory Dec.") ¶¶ 3-4. An immediately required response to Defendants' Rule 12(c) Motion would divert

² Defendants filed their Motion for Judgment on the Pleadings on May 9, 2018 such that the deadline for Plaintiffs' opposition is May 23, 2018.

significant resources required to complete discovery and prepare for the rapidly approaching trial date. The Court stressed the importance of remaining focused on completing discovery and preparing for trial in last week's Status Conference. May 10, 2018 Transcript. at 28:6-10 ("[T]his Court is not going to extend the trial date based upon any complaints that, oh, we're not prepared. So get to work, folks, and get prepared. That's my advice."). Defendants have already delayed the initial trial date in this case by approximately nine months through their Petition for Writ of Mandamus. Preparation for and resolution of Plaintiffs' urgent claims should not be further delayed or impacted by Defendants' untimely Motion for Judgment on the Pleadings.

3. The United States Supreme Court's 2017-2018 session will draw to a close in late June.³ An opinion on the currently pending case of *Trump v. Hawaii*, 138 S.Ct. 923 (2018) (granting certiorari), which also involves the constitutionality of Presidential conduct, could have implications to the arguments raised in Defendants' Motion for Judgment on the Pleadings.
4. The deadline for Defendants to file a petition for certiorari with respect to the Ninth Circuit's denial of their Petition for Writ of Mandamus is June 5, 2018. Defendants' decision whether to seek review of that decision, on what basis, and any response from the Supreme Court to such a petition, likely will have implications for the arguments raised by Defendants in their Motion for Judgment on the Pleadings. The issues raised in Defendants' Motion for Judgment on the Pleadings touch upon

³ U.S. Supreme Court, About the Court, at <https://www.supremecourt.gov/about/procedures.aspx> (last visited May 15, 2018).

arguments previously offered by Defendants and rejected by this Court and the Ninth Circuit during the motion to dismiss, certification for interlocutory appeal, and petition for writ of mandamus stages. As such, Defendants' pending decision on whether to seek certiorari review is highly relevant to Plaintiffs' response to the Motion for Judgment on the Pleadings.

5. Finally, counsel for Plaintiffs, in their active and diligent prosecution of Plaintiffs' claims, have numerous engagements, travel considerations, and other matters, presenting further challenges to securing adequate time for the preparation and drafting of Plaintiffs' opposition to Defendants' Motion. Olson Dec. ¶ 6; Gregory Dec. ¶ 5.

For the foregoing reasons, Plaintiffs respectfully move the Court for an extension of time until June 29, 2018 to file their response in opposition to Defendants' Motion for Judgment on the Pleadings.

DATED this 18th day of May, 2018, at Eugene Oregon.

/s/ Philip L. Gregory

PHILIP L. GREGORY (*pro hac vice*)
pgregory@gregorylawgroup.com
Gregory Law Group
1250 Godetia Drive
Redwood City, CA 94062
Tel: (650) 278-2957

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Seattle, WA 98117
Tel: (206) 696-2851
Email: andrearodgers42@gmail.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of May, 2018, I served the foregoing Motion for Extension of Time by the Electronic Court Filing (ECF) System on the following counsel for all parties.

Sean C. Duffy
sean.c.duffy@usdoj.gov
Frank Singer
Frank.Singer@usdoj.gov
Marissa Piropato
Marissa.piropato@usdoj.gov
Clare Boronow
clare.boronow@usdoj.gov

U.S. Department of Justice
Environment & Natural Resources Division
Natural Resources Section
601 D Street NW
Washington, DC 20004

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Law Offices of Andrea K. Rodgers
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Seattle, WA 98117
Tel: (206) 696-2851
Email: andrearodgers42@gmail.com

Dated: May 18, 2018

s/ Philip L. Gregory

PHILIP L. GREGORY (*pro hac vice*)
pgregory@gregorylawgroup.com
Gregory Law Group
1250 Godetia Drive

Redwood City, CA 94062
Tel: (650) 278-2957
Attorney for Plaintiff