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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
(Eugene Division)

NEWPORT FISHERMEN'S WIVES, INC.,
an Oregon nonprofit corporation, **CITY OF
NEWPORT, LINCOLN COUNTY, PORT
OF NEWPORT** and **MIDWATER
TRAWLERS COOPERATIVE**, an Oregon
cooperative,

Plaintiffs,

v.

UNITED STATES COAST GUARD, an
agency of the United States Department of
Homeland Security,

Defendant.

Case No. 6:14-cv-1890-MC

**PLAINTIFFS' MOTION TO STAY AND
MEMORANDUM IN SUPPORT
THEREOF**

(Oral Argument Requested)

PLAINTIFF'S MOTION TO STAY

Plaintiffs hereby move this Court for a stay of proceedings in this case through December 31, 2015, subject to the right of any party to petition the Court to return the case to the active docket if conditions warrant. In support of this motion, plaintiffs rely upon the record herein, the

authorities discussed below, Plaintiffs' Memorandum in Opposition to Motion to Dismiss and the Third Declaration of Ginny Goblirsch.

MEMORANDUM IN SUPPORT OF MOTION TO STAY

With the enactment of the Howard Coble Coast Guard Maritime Transportation Act of 2014 on December 18, 2014, the Coast Guard is prohibited from terminating the operations of its air rescue helicopter at the Newport Air Station through the balance of this calendar year. For the reasons set out in Plaintiffs' Memorandum in Opposition to the Coast Guard's Motion to Dismiss, this case is not moot and should not be dismissed on that or any other ground. Rather, this Court should exercise its broad discretionary authority to control its docket and impose a stay of proceedings for the approximately 10 months between the time that the pending motions are argued and the sunset of the statutory disruption of the Coast Guard's October 2014 decision to close the Newport Air Station. Given the short period of time between now and the effective date of that sunset provision, the entry of a stay imposes no prejudice on the government and, most significantly, both this Court and the parties will save considerable time and expense if the Coast Guard attempts to close the Newport Air Station in early 2016 based upon the same or a similar *post hoc* illegal categorical exclusion process.

There is abundant authority both in this district and the Ninth Circuit holding that a district court has broad discretion to control its docket as the Court sees fit. *See, e.g., Am. Rivers, Inc. v. NOAA Fisheries*, No. CV-04-0061, 2004 WL 2075032, at *3 (D. Or. Sept. 14, 2004) ("Federal courts possess the inherent broad, although not unlimited, discretion to manage their dockets and stay proceedings in the interests of economy and fairness.") (citing *Yong v. INS*, 208 F.3d 1116, 1119 (9th Cir. 2000)); *Sequoia Forestkeeper v. U.S. Forest Serv.*, No. CV F 07-1690

LJO DLB, 2008 WL 2131557, at *4 (E.D. Cal. May 21, 2008) ("This Court 'has broad discretion' to stay proceedings as an incident to its power to control its own docket.") (quoting *Clinton v. Jones*, 520 U.S. 681, 707 (1997)).

This case is less than three months old, having been filed on November 25, 2014. Plaintiffs seek a stay only through December 31, 2015, at which time the parties should be required to confer as to next steps and contact the Court regarding scheduling a status conference. The duration of plaintiffs' requested stay thus is less than 11 months calculated from the date of this filing, and less than 10 months calculated from the date of the final brief under the Court's scheduling order found at Docket No. 35. If the case is then fully and finally resolved in the first quarter of 2016, it will have been concluded within just over 16 months, which is significantly less than the 22.8-month average time from filing to trial in this district. In the meantime, in the event developments involving the status of the Newport Air Station develop during the balance of 2015, the parties may petition to reactivate case proceedings.

Given the irreparable nature of the likely injuries that will befall plaintiffs and the public in the event of the Coast Guard seeks to repeat its challenged conduct, which were detailed in plaintiffs' prior filings, a stay of moderate duration is in the interests of justice and should be granted. The Coast Guard, in contrast, can point to no harm as a consequence of a stay, particularly given its representations that it "presently has no intention to close the Air Facility or relocate the MH-65 helicopter operating there." Second Martino Decl. ¶ 3. Plaintiffs sincerely hope the Coast Guard's present intention evolves into a concrete solution that is appropriately

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protective of both human life and the environment. But given the current posture of this case, a stay is appropriate and warranted.

DATED this 9th day of February, 2015.

HAGLUND KELLEY LLP

By: /s/ Michael E. Haglund

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of February, 2015, I served the foregoing

PLAINTIFFS' MOTION TO STAY AND MEMORANDUM IN SUPPORT THEREOF, on

the following:

Sean C. Duffy
United States Department of Justice
Environment & Natural Resources Division
Natural Resources Section
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611

by the following indicated method(s):

- by **mail** with the United States Post Office at Portland, Oregon in a sealed first-class postage prepaid envelope.
- by **email**.
- by **hand delivery**.
- by overnight mail.
- by **facsimile**.
- by the court's Cm/ECF system.

Lawyer