

I. Background.

1. This case involves a claim that EPA has unreasonably delayed action on a petition for rulemaking filed with the Agency by Plaintiffs under the Clean Air Act (“CAA”). *See* Complaint, Dkt. No. 1, ¶¶ 2-3.

2. On March 5, 2012, EPA filed an answer to the complaint, denying the allegations that EPA has unreasonably delayed and denying that Plaintiffs are entitled to any relief. Dkt. No. 18.

3. On December 20, 2011, Peabody Energy Corp. and the National Mining Association filed a motion to intervene. Dkt. No. 11. By order dated July 19, 2012, the Court granted the motion to intervene and ordered that the intervenors shall confine their arguments to the existing claims in this action, and not interject new claims or stray into issues, and shall file consolidated briefing. Dkt. No. 27.

4. After the complaint was filed, EPA and Plaintiffs engaged in preliminary discussions regarding the possibility of resolving this matter through settlement. However, EPA and Plaintiffs agreed to postpone further discussions until January 2013, because EPA stated at that time the agency was not in a position to determine whether the instant matter could be resolved through settlement due to the press of other statutory and consent decree deadlines. *See* Joint Motion to Stay All Proceedings, Dkt. No. 22; Defendants’ Reply to Intervenor-Applicants’ Opposition to Stay Motion, Dkt. No. 25.

5. On May 22, 2012, EPA and Plaintiffs filed a Joint Motion to Stay All Proceedings, requesting that the Court stay proceedings in this litigation until January 30, 2013. Dkt. No. 22.

6. On May 25, 2012, Intervenor filed an opposition to the motion for stay. Dkt. No. 25.

7. By Minute Order dated August 28, 2012, the Court partially granted and partially denied the motion for a stay, staying all proceedings until November 30, 2012, and ordered that the parties submit a joint status report on this date.

II. The Parties Wish to Continue the Stay until January 30, 2013.

8. “The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Air Line Pilots Ass’n v. Miller*, 523 U.S. 866, 879 n.6 (1998) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936)). In determining whether to grant a stay, “[t]he court, in its sound discretion, must assess and balance the nature and substantiality of the injustices claimed on either side.” *Gordon v. Fed. Deposit Ins. Corp.*, 427 F.2d 578, 580 (D.C. Cir. 1970). Courts generally approve stays where they are “[i]n the interest of judicial economy and avoiding unnecessary litigation.” *Al-Anazi v. Bush*, 370 F. Supp. 2d 188, 199 (D.D.C. 2005).

9. As the agency stated in the Joint Motion to Stay All Proceedings, filed on May 22, 2012, EPA represents here that is not currently in a position to continue discussions regarding the possibility of settlement with Plaintiffs. Dkt. No. 22 at ¶ 3. EPA represents that it has numerous rulemaking deadlines to meet in 2012, but expects to be in a better position to evaluate and discuss a date by which it can act on Plaintiffs’ petition in January 2013. *See* Defendants’ Reply to Intervenor-Applicants Opposition to Stay Motion, Dkt. No. 25.

10. Plaintiffs represent that they are aware of EPA’s contentions concerning its workload scheduled for the remainder of 2012 and, rather than immediately litigate their claim, have agreed to a brief pause in the litigation to facilitate settlement discussions. Should settlement talks fail, Plaintiffs represent that they intend to press forward aggressively with litigation.

11. EPA and the Plaintiffs believe that litigating this case will cost the Court and the parties time and effort that could be avoided if the matter is stayed and the parties are ultimately able to resolve the case through settlement. Therefore, EPA and the Plaintiffs submit that granting the stay will serve judicial economy and prevent hardship to the parties and is in the public interest. Because a stay will preserve the status quo for two months, it is unlikely to harm intervenors.

III. CONCLUSION

12. For the foregoing reasons, the Court should (1) continue a stay of all proceedings in this matter until January 30, 2013; and (2) direct the parties to submit a report to govern future proceedings no later than January 30, 2013.

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Respectfully submitted,

IGNACIA S. MORENO
Assistant Attorney General
Environment & Natural Resources Division

/s/ Jessica O'Donnell
JESSICA O'DONNELL (DC Bar # 473166)
STEPHANIE J. TALBERT
Trial Attorney
U.S. Department of Justice
Environmental Defense Section
P.O. Box 7611
Washington, D.C. 20044
Tel: (202) 305-0851
Fax: (202) 514-8865
jessica.odonnell@usdoj.gov

Attorneys for Defendants

/s/ Edward B. Zukoski (with permission)
Edward B. Zukoski (Colo. Bar No. 26352)
Pro hac vice
Robin Cooley (D.C. Bar No. CO0040)

Earthjustice
1400 Glenarm Place, Suite 300
Denver, CO 80202
Telephone: (303) 623-9466
Fax: (303) 623-8083
E-mail: tzukoski@earthjustice.org
rcooley@earthjustice.org

Attorneys for
Plaintiffs WildEarth Guardians et al.