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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

GUAM PRESERVATION TRUST,)	No. 1:10-cv-00677-LEK-RLP
et al.,)	
Plaintiffs,)	DEFENDANTS' MEMORANDUM
v.)	IN SUPPORT OF MOTION FOR
)	VOLUNTARY REMAND AND
KATHERINE GREGORY, Rear)	STAY
Admiral, Commanding Officer, Naval)	
Facilities Engineering Command,)	DATE: TBD
Pacific, <i>et al.</i> ,)	TIME: TBD
Defendants.)	COURT: AHA NONOI
_____)	JUDGE: Hon. Leslie E. Kobayashi

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**DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION FOR VOLUNTARY REMAND AND STAY**

I. INTRODUCTION

Defendants Katherine Gregory, *et al.*, move for a voluntary remand of this case to the Department of the Navy (Navy) while the defendants complete an ongoing review and analysis with respect to the siting of the live-fire training range complex on Guam, which is the subject matter of the Complaint for Declaratory and Injunctive Relief filed by the plaintiffs, Guam Preservation Trust, *et al.* As shown in the three declarations filed in support of this motion,^{1/} the Navy has commenced and currently is undertaking a process to determine whether to prepare additional analysis pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-32, prior to issuing a Record of Decision (ROD) to select a site for the live-fire training range complex on Guam. The Navy's review will include an assessment to determine whether application of a technical solution that could minimize the physical footprint of the training range complex is warranted at the locations identified by the plaintiffs in the Complaint.

^{1/} The defendants file the Declaration of Joseph D. Ludovici, the Declaration of Edward R. Sobieranski III, and the Declaration of Captain Don R. Chandler.

The Navy then intends to prepare a Supplemental Information Report (SIR) addressing the information obtained and assessed during the current process, so that the Navy can determine whether to prepare supplemental NEPA documentation before making a decision a final decision regarding the specific site for the live-fire training range complex. Over the next three months, the Navy expects to have a better estimate as to the likely timing for such a decision.^{2/} Until the Navy issues a final decision regarding the specific site for the live-fire training range complex, whether after the current process or after completion of supplemental NEPA analysis, there is no final agency action that is susceptible of judicial review in this case.^{3/}

In light of the status of the Navy's ongoing process, as detailed in the

^{2/} One possible outcome of the SIR would be a decision to prepare a supplemental environmental impact statement pursuant to NEPA and the Council on Environmental Quality (CEQ) regulations, 40 C.F.R. § 1502.9(c). The defendants, of course, cannot prejudge the outcome until the Navy completes the SIR.

^{3/} The defendants reserve the right to move to dismiss the Complaint for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1). Contrary to the plaintiffs' allegations in their Complaint, the defendants have not taken a final agency action with respect to the selection of a site for the proposed future Marine Corps training range complex on Guam. Absent final agency action on site selection, the defendants have not waived their sovereign immunity under the Administrative Procedure Act (APA), 5 U.S.C. §§ 701-706. Without the requisite waiver of sovereign immunity under the APA, there is no basis for judicial review of the claims alleged in the Complaint, all of which pertain exclusively to the location of the training range site.

attached declarations, judicial review of the plaintiffs' claims based on the portion of Administrative Record documents that have been filed with the court (Doc. 57) would be premature and inappropriate. As the court is aware from statements included in the defendants' April 15, 2011, Notice of Lodgment of Administrative Record Documents (Doc. 57), the defendants continue to prepare supplemental documents for the Administrative Record. Because the current review process is not yet complete, the defendants will continue to prepare such documents until the Navy issues its decision on the siting of the live-fire training range complex. Under these circumstances, the interests of judicial efficiency, the convenience of the parties, and the overall public interest warrant granting a voluntary remand of this case to enable the Navy to complete the ongoing process and reach a decision on the siting of the live-fire training range complex on Guam.

The defendants also request that the court stay all deadlines and proceedings during the remand for a period of 90 days.^{4/} The court alternatively may wish to

^{4/} The schedule had called for the plaintiffs to file their motion for summary judgment on June 15, the defendants to file a cross-motion and opposition on July 15, the plaintiffs to file their opposition/reply on August 15, and the defendants to file their final reply on August 29, with a hearing on September 19, 2011. On May 27, 2011, the parties filed a Joint Stipulation and Order (Doc. 58), requesting modifications in the schedule to enable the court to consider this motion. On May 27, 2011, the court issued a Minute Order (Doc. 59) vacating the September 19 hearing date and "corresponding filing deadlines" for summary judgment briefs.

issue an administrative closure, which would have the effect of closing the case during the remand, but permit the plaintiffs to reopen the case for cause thereafter.

As explained in the attached declarations, the defendants do not anticipate taking any action over the next 90 days that could result in any prejudice to the plaintiffs. Specifically, the Navy does not anticipate taking any action during this period that would limit the choice of reasonable alternatives available for potential additional NEPA analysis, see 40 C.F.R. § 1506.1(a), by precluding the possible selection of any location that the plaintiffs identified in their Complaint. Further, during the 90-day stay, if the Navy were to determine that a proposed action might alter the status quo and preclude the possible selection of any location identified in the Guam and CNMI Military Relocation Draft and Final Environmental Impact Statements (Guam DEIS and Guam FEIS, respectively, or, collectively, Guam EIS) or the September 2010 ROD (September ROD) as a potential site for the live-fire training range complex, including the locations that the plaintiffs identified in their Complaint, then the defendants would commit to notify the court and the plaintiffs at least 15 days in advance.

II. PROCEDURAL AND STATUTORY BACKGROUND

The plaintiffs' Complaint alleges 13 claims for relief, including 11 claims under NEPA, one claim under § 106 of the National Historic Preservation Act

(NHPA), 16 U.S.C. § 470f, and one claim under the Coastal Zone Management Act (CZMA), 16 U.S.C. §§ 1451-65. The Complaint expressly states that all 13 claims are limited to “the Defendants’ decision to choose Pāgat Village and its surrounds as the site of the firing range complex...” Complaint, ¶ 6. The Navy’s September ROD, however, did not reach a decision on the specific location for the live-fire training range complex. See Ludovici Decl., ¶ 13. To the contrary, the September ROD expressly deferred any decision regarding the site selection until a later date, following further review, including then-ongoing consultation under § 106 of the NHPA. ROD at 2, 4-5, 88. The defendants have attached a copy of the September ROD as Exhibit 1.

A. The Department of Defense’s Guam and CNMI Military Relocation

The Guam EIS analyzed the environmental consequences of various alternatives to support the relocation of approximately 8,000 U.S. Marines, along with approximately 9,000 dependents, from Okinawa, Japan, to the United States Territory of Guam (Guam Relocation). The Guam EIS includes assessments regarding the planned construction of a main cantonment (headquarters, administrative support, residential housing, and community support), non-firing training ranges, air combat element facilities, waterfront facilities, and a live-fire training range complex. The Guam EIS also analyzed the environmental impact of

siting a transient nuclear aircraft carrier wharf within Apra Harbor on the west coast of Guam and an Army Air and Missile Defense Task Force on Guam.

The September ROD selected some of the preferred alternatives identified in the Guam FEIS, including the selection of the main cantonment area at the Naval Computer and Telecommunications Station (NCTS) Finegayan, family housing at the former Federal Aviation Administration (FAA) property/South Finegayan, aviation activities at Andersen Air Force Base North Ramp, and waterfront operations at Apra Harbor.^{5/} September ROD at 14-16, 88. With respect to the proposed actions within the scope of this litigation, however, the Navy expressly deferred taking final agency action and expressly reached no decision in the September ROD regarding the specific site location on Guam for the Marine Corps' live-fire training range complex.^{6/} September ROD at 88.

As the September ROD stated, the Navy deferred the decision on location of the live-fire training range complex pending completion of then-ongoing

^{5/} The attached Exhibit 2 is a map from the Guam FEIS, which shows the location of the principal points of reference. Guam FEIS at ES-11, Figure ES-2.

^{6/} The Navy also deferred a decision on the specific site for the location of the proposed transient nuclear carrier berth within Apra Harbor. September ROD at 2, 90. That issue has no bearing on this case, as the plaintiffs do not contest the elements of the September ROD pertaining to the Navy's vessel berth in Apra Harbor.

consultations being conducted under § 106 of the NHPA. September ROD at 4.

The Navy completed the NHPA consultations on March 14, 2011, when the Department of Defense (DoD) executed the *Programmatic Agreement Among the Department of Defense, the Advisory Council on Historic Preservation, the Guam State Historic Preservation Office, and the Commonwealth of the Northern Mariana Islands State Historic Preservation Officer Regarding the Military Relocation to the Islands of Guam and Tinian* (PA) covering the entire Guam Relocation with the Guam State Historic Preservation Officer, the Advisory Council on Historic Preservation, and the CNMI Historic Preservation Officer. Ludovici Decl., ¶ 11. A copy of the PA is attached hereto as Exhibit 3.

In the PA, the Navy agreed that, if DoD eventually were to select a location for the training range complex in the Route 15 area on the east coast of Guam, then DoD would commit to “providing 24 hour a day/seven day a week unimpeded access to the Pagat Village and Pagat Cave historical sites, as part of the measures to avoid, minimize and mitigate impacts on historic properties.” PA at 16; Ludovici Decl., ¶ 12. In addition, DoD committed that it “w[ould] adjust proposed range layout plans to continue unfettered access to these important historical and cultural locations. Pagat cave, Pagat village, and the existing path to these sites would not be included in the footprint of the complex or the surface danger zone

for the ranges, and full ownership of these properties would remain with the Government of Guam.” PA at 16-17; Ludovici Decl., ¶ 12. Although the Section 106 process has been completed, Mr. Ludovici attests that, as of the present date, the “Navy has yet to make a final decision on the location of the live-fire training range complex.” Ludovici Decl., ¶ 13.

B. Plaintiffs’ Challenges Regarding the Training Range Complex

The Complaint has 11 NEPA claims challenging the proposed live-fire training range complex.⁷ The Complaint expressly states that the plaintiffs “do not contest in this lawsuit the larger relocation of Marines and other forces to Guam.” Doc. 1, Complaint, ¶5. Rather, they challenge what they characterize as the “decision to choose Pãgat Village and its surrounds as the site of the firing range complex.” *Id.*, ¶ 6. The plaintiffs assert that the court has jurisdiction over the NEPA claims pursuant to the APA, 5 U.S.C. §§ 701-706, because the ROD “represents final agency action with respect to Pãgat.” Complaint, ¶ 66. They also allege failures under the APA to comply with the NHPA (Count XII, Complaint ¶¶ 97-104) and the CZMA (Count XIII, Complaint ¶¶ 105-112).

⁷ The plaintiffs assert the following challenges under NEPA: Counts I-V allege a failure to consider reasonable alternatives; Counts VI-VII allege a failure adequately to assess environmental impacts; Count VIII alleges a failure adequately to mitigate impacts; and Counts IX-XI allege failures to comply with procedural requirements of NEPA and the CEQ regulations.

C. Defendants' Ongoing Administrative Review Processes

Joseph D. Ludovici, Director of the Joint Guam Program Office, is the Navy official responsible for the “oversight of planning, programming, communications, environmental assessment and construction for the Defense Realignment Program Initiative to relocate over 8,000 U.S. Marines from Okinawa, Japan, to Guam.” Ludovici Decl., ¶ 1. Mr. Ludovici describes the four-step screening process that the Navy took to assess alternatives for the live-fire training range complex. Id. ¶¶ 8-9. This included the identification of operational requirements and the physical footprint for the training range complex, which includes the three-dimensional buffer zones known as “surface danger zones” (SDZs). Id., ¶ 9. SDZs are established to ensure that munitions are contained on the range up to the required margin of safety. Sobieranski Decl., ¶¶ 15-16.

As the September ROD makes clear and as Mr. Ludovici attests, the Navy deferred a final decision on the location of the live-fire training range complex pending completion of the NHPA Section 106 consultation process. Ludovici Decl., ¶ 10. As part of that process, the Navy committed to “providing 24 hour a day/seven day a week unimpeded access to the Pagat Village and Pagat Cave historical sites,” if the Navy selected a location for the training range complex in the Route 15 area on the east coast of Guam. Ludovici Decl., ¶ 12; PA at 15-17.

Consistent with its commitment in the PA, the Navy considered how it could minimize the physical footprint of the live-fire training range complex in the event it were to select a location for the live-fire training range complex in the Route 15 area on the east coast of Guam. Ludovici Decl., ¶ 14. As a result, the Navy identified a technical methodology known as “probabilistic modeling.” Sobieranski Decl., ¶ 30; Ludovici Decl., ¶¶ 15-16. Probabilistic modeling uses site-specific features and engineering control measures, which are incorporated into the range modeling process (i.e., the process used to determine the requisite size of the three-dimensional SDZ). Sobieranski Decl., ¶¶ 25-26.

Mr. Sobieranski, the Head of the U.S. Marine Corps’ Range Safety and Design Branch, Training and Education Command, is directly responsible for all matters associated with the Marines Corps’ range safety and design. Sobieranski Decl., ¶ 1. As he explains, the Marine Corps has used probabilistic modeling on three other installations and, in each case, was able to establish smaller SDZs as a result of the “more accurate representation of the physical footprint within which rounds, fragments, and ricochets will land on each of the specific ranges that were modeled.” Id., ¶ 30.

The prior success with the use of probabilistic modeling, which “may reduce the amount of land that the Navy must control to operate a range,” id., ¶ 31,

prompted the Marine Corps and Navy to consider using this model to meet the obligations in the PA and to undertake the current review process. Ludovici Decl., ¶¶ 15-16. The Navy also recognized that, because the application of probabilistic modeling may minimize the physical footprint of the training range complex, it is appropriate to consider whether this modeling is warranted at any other locations discussed in the Guam EIS and September ROD. Id., ¶ 17.

As Mr. Ludovici testifies, these developments led the Navy to initiate the current deliberative process. Ludovici Decl., ¶ 17. The first step in this process requires the Navy to determine whether modeling is warranted at any other locations identified in the Guam EIS and the September ROD. Id., ¶ 19. Application of the model at any site where it is warranted will produce empirical data about the live-fire impacts for the particular site, which will enable range planners to establish a more exact SDZ. Sobieranski Decl., ¶ 27. The resulting SDZ, known as the probabilistic SDZ or “PSDZ,” may have a decreased footprint for the ranges, while still providing “the same one-in-one million margin of safety” as the “deterministic modeling” used in the FEIS. Id., ¶¶ 26-29. Then, any modeled site can be assessed based upon the suitability and feasibility criteria outlined in the Guam EIS. Ludovici Decl., ¶¶ 19-22.

Through this process, the Navy will be able to determine whether

application of the probabilistic modeling, where warranted, provides significant new information about any alternative that is “reasonable,” within the meaning of NEPA, based upon application of the suitability and feasibility criteria to the more exact SDZ. The Navy will prepare a document setting forth the results of the modeling, which it anticipates including in a SIR. Id., ¶ 22. The Navy will consider the information set forth in the SIR to determine whether additional analysis is necessary pursuant to NEPA before the Navy issues a supplemental Record of Decision concerning the live-fire training range complex on Guam. Id.

The attached Declaration of Navy Captain Don R. Chandler describes the Navy’s ongoing planning efforts related to the Guam Relocation. Chandler Decl. ¶¶ 9-28. Captain Chandler is the Guam Program Management Officer for the Naval Facilities Engineering Command Pacific, Pearl Harbor, Hawaii. Chandler Decl., ¶ 1. As he notes, currently anticipated activities in support of the Guam Relocation will occur at only one of the locations – the NCTS Finegayan area – that the plaintiffs contend, in their Complaint, is a reasonable alternative location for the live-fire training range complex. Id., ¶ 15.

Captain Chandler further attests that the Navy does not anticipate taking any activities related to the Guam Relocation for the next 90 days that would preclude the Navy from siting the live-fire training range complex at any location that the

plaintiffs contend, in their Complaint, is a reasonable alternative. Id., ¶¶ 28-29. The Navy may conduct preliminary design and site investigations, id., ¶¶ 13, 16, and real estate activities such as valuation estimates, environmental feasibility assessments, and title searches, id., ¶ 24, but none of those activities would foreclose the possible selection of the alternative locations identified in ¶ 17 of the Chandler Declaration, including those listed in the Complaint.

III. ARGUMENT

The Court Should Grant Defendants' Request For Voluntary Remand and Stay the Litigation

The defendants request that the court grant a remand to the Navy while the agency completes its ongoing process related to the live-fire training range complex. In addition, the defendants request that the court stay the litigation for 90 days while the Navy considers whether to issue a final decision regarding the siting of the training range complex.^{8/} Granting a remand and stay will (1) conserve judicial resources, (2) allow the parties to avoid unnecessary litigation, (3) preserve the status quo, and (4) avoid any prejudice to the plaintiffs' interests. As noted above and discussed below, the court also may wish to consider an administrative closure as an alternative to a stay.

^{8/} The defendants would provide the court and plaintiffs with an update before the end of the 90-day stay period and indicate whether a further stay is warranted.

A. The Court Should Grant Defendants' Request for Voluntary Remand

A voluntary remand is a request by an agency for remand without judicial consideration of the merits. See Central Power & Light Co. v. United States, 634 F.2d 137, 145 (5th Cir. 1980). Remand is authorized because “[a]dministrative agencies have an inherent authority to reconsider their own decisions, since the power to decide in the first instance carries with it the power to reconsider.”^{2/} Trujillo v. Gen. Elec. Co., 621 F.2d 1084, 1086 (10th Cir. 1980); accord Lute v. Singer Co., 678 F.2d 844, 846-7 (9th Cir. 1982) (applying Trujillo), reh’g denied 696 F.2d 1266 (1983); Natural Res. Def. Council v. Dep’t of the Interior, 275 F.Supp.2d 1136, 1141 (C.D. Cal. 2002) (citing Trujillo as authority in granting request for remand to reconsider decision); see also Ford Motor Co. v. Nat’l Labor Relations Bd., 305 U.S. 364, 375 (1939) (affirming decision to grant agency’s request for remand, reasoning that, unless precluded by statute, principles of judicial review authorize courts to “giv[e] an administrative body an opportunity to meet [a challenged party’s] objections to its order”); Loma Linda Univ. v. Schweiker, 705 F.2d 1123, 1127 (9th Cir. 1983) (citation omitted) (“A reviewing court has inherent power to remand a matter to the administrative agency.”).

^{2/} As outlined in footnote 3, *supra*, contrary to the plaintiffs’ allegations in the Complaint, the defendants have not taken a final agency action with respect to the selection of a site for the live-fire training range complex.

As discussed above, the Navy expressly deferred making a decision with regard to the siting of the live-fire training ranges. A remand is appropriate at this juncture while the Navy undertakes the ongoing review process and determines whether additional analysis is necessary pursuant to NEPA before it issues a ROD for the live-fire training range complex location. Ludovici Decl., ¶ 22. In connection with its current process, the Navy is reviewing alternatives for the location of the training complex on Guam that it considered during the NEPA process and which are reflected in the Guam EIS. This process involves considering whether application of the probabilistic model is warranted at locations that the Navy had determined were not reasonable alternatives, and, if so, whether, after applying the model, such a location now meets the suitability and feasibility criteria outlined in the Guam EIS. Once the multi-step review process described by Mr. Ludovici and Mr. Sobieranski is completed, the resulting “technical analysis will be used to prepare a supplemental information report (‘SIR’). The Navy will consider the information set forth in the SIR to determine whether additional analysis is necessary” pursuant to NEPA or “whether it can issue a supplemental Record of Decision concerning the live-fire training range complex on Guam.” Ludovici Decl., ¶ 22.

Under NEPA, the responsibility for assessing the environmental impacts of a proposed decision is assigned to the federal agency responsible for taking the proposed action. For this reason, while the federal agency conducts this type of administrative review, the agency “may request a remand, without confessing error,” even if the matter is in litigation. See SKF USA, Inc. v. United States, 254 F.3d 1022, 1028 (Fed. Cir. 2001) (enumerating five general positions an agency may take in seeking remand and ruling that remand to agency was warranted).

Remand may be warranted even without intervening events to enable an agency to conduct further review. Id. at 1029. A request for remand to the agency under these circumstances is appropriate. See Citizens Against Pellissippi Parkway Extension v. Mineta, 375 F.3d 412, 417 (6th Cir. 2004) (reversing district court’s denial of voluntary remand to agency in NEPA case as an abuse of discretion). Remand should be refused only if the request is frivolous or made in bad faith, SKF USA at 1029, *citing* Lutheran Church-Missouri Synod v. Fed. Communications Comm’n, 141 F.3d 344, 349 (D.C. Cir. 1998).

Here, not only have the defendants demonstrated that the Navy deferred a final agency action with regard to the site location, but the defendants also have provided sworn declarations from responsible Navy and Marine Corps officials attesting that, because application of probabilistic modeling may minimize the

physical footprint of the training range complex, it is appropriate for the Navy to consider whether application of probabilistic modeling is warranted at any of the locations that previously were considered for siting the training range complex. Ludovici Decl., ¶¶ 20-21. This process specifically includes the locations that the plaintiffs identified in their Complaint. Id. The defendants submit, therefore, that they should be permitted to complete the ongoing process to assess how best to meet the operational requirements of live-fire training on Guam, while continuing to consider measures to mitigate and minimize impacts identified and discussed during the NHPA § 106 consultation. Id., ¶ 14.

The courts possess ample discretion to grant agency requests for voluntary remands. See, e.g., Loma Linda Univ. v. Schweiker, 705 F.2d 1123, 1127 (9th Cir. 1983). This court has the inherent authority, therefore, to grant the defendants' request for a voluntary remand in order to conserve judicial resources, to allow the parties to avoid unnecessary litigation, and to avoid judicial review on less than the whole administrative record. See, e.g., Ethyl Corp. v. Browner, 989 F.2d 522, 524 (D.C. Cir. 1993) (granting EPA motion for voluntary remand, over opposition, to allow agency to consider new evidence).

Judicial economy is a particularly relevant concern. The Navy's ongoing consideration of the application of the probabilistic modeling to the future site-

selection process could result in the issuance of a decision to which the plaintiffs would not object. This could result, for example, if the site ultimately selected completely avoided impacts to the area that the plaintiffs describe as “Pågat Village and its surrounds.” If the defendants’ ongoing review discloses significant new or changed circumstances in the proposed action or environmental impacts for the training range complex, Ludovici Decl., ¶ 22, the defendants may initiate additional NEPA review, which could include a supplemental EIS and which would culminate in a ROD that could render this case moot.

Voluntary remand also will ensure that the court does not adjudicate the merits of claims based upon an insufficient record. Pursuant to the APA, judicial review of an agency decision should be based upon the “whole record.” 5 U.S.C. § 706. As explained in the April 15, 2011, Notice of Lodgment and confirmed by the defendants’ commitment to undertake further review of several possible locations for the training range complex on Guam, additional documents will be produced relating to the subject matter of the Complaint. The court should not proceed to review the merits of those claims without a complete record, as judicial review of the preliminary and non-final action could result in an impermissible advisory opinion. See, e.g., Sierra Club v. VanAntwerp, 560 F. Supp. 2d 21, 25 (D.D.C. 2008).

Finally, granting a remand will not result in any prejudice to the plaintiffs for three reasons: (1) the Navy does not contemplate any near-term activity over the next 90 days that could encumber the locations assessed as reasonable alternatives in the Guam FEIS (*i.e.*, Training Range Complex Alternative A and Training Range Complex Alternative B), see Chandler Decl., ¶¶ 22-25 (describing deferral of budget request for land acquisition for live-fire training range complex on Guam); (2) the Navy will examine a range of potential sites for the training range complex, including the sites proposed by the plaintiffs, Ludovici Decl., ¶¶ 17-18; and (3) the Navy will prepare a SIR to consider whether additional NEPA review is necessary before it can issue a ROD concerning the live-fire training range complex on Guam. Id., ¶ 22. Moreover, as explained in the Chandler Declaration, the activities that the Navy anticipates undertaking in support of the Guam Relocation, for the next 90 days, would not preclude the Navy from siting the live-fire training range complex at any location that the plaintiffs contend, in their Complaint, is a reasonable alternative for that complex. Chandler Decl., ¶¶ 17, 23, 27-29.

B. The Court Should Stay All Proceedings Until Defense Issues a Final Decision on Siting the Training Range Complex on Guam

The federal courts have inherent authority to stay judicial proceedings before them. Rohan ex. rel. Gates v. Woodford, 334 F.3d 803, 817 (9th Cir. 2003). The “power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its own docket with economy of time and effort for itself, for counsel, and for litigants.” Landis v. N. Am. Co., 299 U.S. 248, 254 (1936). Whether to grant a stay lies within the district court’s sound discretion. See Davel Communications, Inc. v. Qwest Corp., 460 F.3d 1075, 1091 (9th Cir. 2006) (remanding to consider stay or dismissal without prejudice).

Judicial economy is best served by allowing the defendants’ ongoing efforts to be completed, which quite conceivably could eliminate the need to adjudicate the current claims altogether. Even if the court eventually were required to assess the merits of the pending action, a stay at the present time would ensure that the court’s decision will be based upon a final agency action and the whole administrative record compiled for that action. The court also may wish to issue an administrative closure, which would have the effect of closing the case during the remand, but permit the plaintiffs to reopen the case for cause, if warranted, at the appropriate time.

The defendants emphasize that they anticipate taking no action for at least the next 90 days that would alter the status quo in any manner that could prejudice the plaintiffs' interests. The defendants would agree, as a condition of a stay, to provide the court and the plaintiffs with at least 15 days' notice if the situation should change before taking any action that might preclude the possible selection of any location that the plaintiffs have identified, in their Complaint, as a potential site for the live-fire training range complex.

IV. CONCLUSION

The defendants request that the court remand this case to the Navy for further administrative proceedings regarding the modeling and assessment of impacts for the location of the live-fire training range complex on Guam. The defendants also request that the court stay all litigation deadlines for 90 days or administratively close the case during the remand.

Respectfully submitted this 29th day of May, 2011.

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I hereby certify that on May 29, 2011, I electronically filed the “Defendants’ Memorandum in Support of Motion for Voluntary Remand and Stay” with the Clerk of the Court using the ECF system, which automatically will send email notification to the attorneys of record listed below:

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