

• *Rodriguez ex rel. Rodriguez v. DeBuono*, 175 F.3d 227, 235-36 (2d Cir. 1999) (“Nothing in this opinion should be taken to in any way inhibit a district court from granting a brief stay of a preliminary injunction in an appropriate case in order to permit the Court of Appeals an opportunity to consider an application for a stay pending an expedited appeal. Such brief stays for a matter of days are frequently issued when a district court denies an open-ended stay pending appeal. They give the appellate court an opportunity to decide whether an additional stay and an expedited appeal should be granted.”).

• *Marie v. Moser*, No. 14-cv-02518-DDC/TJJ, 2014 WL 5598128, at *22 (D. Kan. Nov. 4, 2014) (granting preliminary injunction but staying the effective date to “permit adequate time for defendants to appeal from this Order and try to convince the Tenth Circuit that it should stay the Court’s preliminary injunction for a longer period.”).

An administrative stay along these parameters is different, of course, from the stay of an injunction pending appeal contemplated by Federal Rule of Appellate Procedure 8 which contemplates a stay of the injunction during the pendency of the *whole* appeal. The United States is not in a position to assess whether a stay pending appeal is appropriate until it knows the parameters of the injunction as required by Federal Rule of Civil Procedure 65(d) (“describe in reasonable detail * * * the act or acts restrained or required.”). Federal Defendants respectfully request that this Court enter a brief stay to last for 21 days after the Court issues its order on the scope of the injunction. The United States will not be able to make a decision on whether to file a motion for a stay of the injunction pending appeal (either in the district court or the Court of Appeals) until it knows the scope of the injunction and receives authorization (if any) from the Office of the Solicitor General to pursue an interlocutory appeal.

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Respectfully submitted,

JOHN C. CRUDEN
Assistant Attorney General
Environment & Natural Resources Division

/s/ Meredith L. Flax

Meredith L. Flax
Senior Trial Attorney (D.C. Bar 468016)
U.S. Department of Justice
Environment & Natural Resources Division
Wildlife & Marine Resources Section
Ben Franklin Station, P.O. Box 7611
Washington, D.C. 20044-7611
Phone: (202) 305-0404
Fax: (202) 305-0275
Email: meredith.flax@usdoj.gov

/s/ Clare M. Boronow _____
Clare M. Boronow
Trial Attorney (Admitted to the Maryland Bar)
U.S. Department of Justice
Environment & Natural Resources Division
Natural Resources Section
Ben Franklin Station, P.O. Box 7611
Washington, D.C. 20044-7611
Phone: (202) 305-0492
Fax: (202) 305-0506
Email: clare.boronow@usdoj.gov

Attorneys for Federal Defendants