IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA, Plaintiff, v. CHAMELEON LLC and GARY V. LAYNE, Defendants.	)	Civil Action No. 3:23cv763

DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO STAY PENDING A RULING ON MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION AND FAILURE TO STATE A CLAIM

The Government has already gained a second bite at the apple with its pleading, having been granted leave to file the Amended Complaint. It should not get a second bite at the discovery apple until it has stated a viable claim (which the Government cannot). The aggressive pursuit of Mr. Layne[1] over the last four-plus years by the Government has yielded nothing more than this Court telling the Government that it had not done enough to "pass go." And for this, Mr. Layne has incurred substantial expenditures of legal fees and expert witness costs. Put differently, ***Mr. Layne*** has borne significant burdens associated with the ***Government's*** failure here. Mr. Layne requests that the Court stay this proceeding until such time as the Court rules on Mr. Layne's request to dismiss the Amended Complaint. This is the prudent and appropriate course.

First, if past is prologue, Mr. Layne anticipates that the Government will litigate this case to the hilt during the pendency of the Motion to Dismiss the Amended Complaint. One only need

[1] The Government also names Chameleon LLC, the LLC that Mr. Layne used to purchase the Site. For all intents and purposes, the Government pursues Mr. Layne individually.

to look at the docket in this matter to confirm this. During the pendency of the original motion to dismiss, the Government aggressively pursued discovery, resulting in numerous discovery disputes. This required the Parties to file multiple joint statements in accordance with this Court's Pre-Trial Order. It also included the Government filing a purported "joint" statement which, in fact, was not joint and admittedly only included what the Government thought necessary (and not what Mr. Layne wanted to have included) in contravention of this Court's Pre-Trial Order. Moreover, the Government actually obtained discovery during the pendency of the previous Motion to Dismiss—including an extensive Site inspection to which Mr. Layne ultimately consented after a lengthy meet-and-confer process. This Site visit was not the first. Instead, it was in addition to a three-day, court-approved Site visit in 2021.

Second, this is not some run-of-the-mill case. Facing litigation with grave consequences and significant financial penalties, Mr. Layne has taken the road less traveled. A small business owner with limited resources, he has chosen to litigate against the Federal Government on the basis of principle—the principle being that the *Federal* Government's jurisdiction under the Clean Water Act ("CWA") is limited post-*Sackett*, an opinion of the United States Supreme Court that all parties agree is dispositive and which was issued months *before* the Government filed its lacking Complaint in this case.[2]

Admittedly, litigation can be costly. But it should be decided on the merits, not on the comparative resources of the Parties. Litigation should not be a war of attrition with the side with far greater resources prevailing. Should the Government be allowed to proceed during the

[2] As Mr. Layne has acknowledged, the wetlands at issue fall under the *Commonwealth*'s jurisdiction. (*See* Apr. 4, 2024 Hr'g Tr. 9:4 ("MR. TALBOTT: . . . . The Commonwealth of Virginia has jurisdiction.".) Mr. Layne should be dealing with the Virginia Department of Environmental Quality and (if necessary), the very capable attorneys in the Commonwealth's Office of the Attorney General.

pendency of Mr. Layne's Motion to Dismiss the Amended Complaint, it will only serve to drive up these fees and costs on Mr. Layne further and likely negatively-impact judicial economy during the discovery process with potentially unnecessary discovery dispute filings. Should the Court agree with Mr. Layne for a ***second*** time that the Government has failed to state a claim, incurring additional fees and costs will all be for naught. A brief stay will maintain the current détente between Mr. Layne and the Government, offering no advantage to either side, with the benefit of increased judicial economy in avoiding potential discovery disputes.

For the reasons set forth more fully below, Mr. Layne requests that this Court stay this matter until disposition of Defendants' Motion to Dismiss the Amended Complaint.[3]

BACKGROUND

Mr. Layne and his limited liability company, Chameleon, LLC, (collectively "Defendants") are the subject of this enforcement action brought by the Federal Government. The action alleges a single count under the Clean Water Act, and the Government seeks massive penalties for daily violations allegedly stretching back several years. Accordingly, Defendants face tens of millions of dollars in potential civil penalties. The Government filed suit in November 2023, nearly four years after it first became aware of potential CWA violations related to Mr. Layne's use of his private property, even while the Government had a tolling agreement with Mr. Layne in hand and, most importantly, many months after the Supreme Court's issuance of *Sackett.*

Defendants moved to dismiss the original Complaint arguing that that the Government failed to allege sufficient well-pled facts establishing subject matter jurisdiction and/or stating a

[3] Currently, there is no schedule in this matter, and discovery is not open as the Parties have not held a Rule 26(f) conference related to the Amended Complaint. Entry of a Rule 16 order to set a scheduling conference would trigger that requirement. Accordingly, and in the alternative to affirmatively granting a stay, Mr. Layne requests that the Court refrain from entering a Rule 16 order until after disposition of his Motion to Dismiss the Amended Complaint.

claim on the basis that the documents incorporated by the Government into the Complaint demonstrate that, in fact, no waters of the United States ("WOTUS") exist on Mr. Layne's property (the "Site") and that there are miles-long stretches of ephemeral or intermittent (non-jurisdictional/non-WOTUS) "unnamed tributaries" or streams leading up to the Site.

The Court heard oral argument on April 4, 2024. During the pendency of the original Motion to Dismiss, the Parties engaged in discovery—much of it disputed.[4] The Parties filed numerous discovery statements as a result. (*See, e.g.*, Docs. 46, 50, 51, 54.) This included the Government filing a unilateral discovery statement (despite claiming it to be "joint") in contravention of this Court's Pre-Trial Order. (*See* Doc. 54.) In addition to these disputes, the Government also obtained sought-after discovery. For example, after lengthy meet-and-confer efforts, Mr. Layne allowed the Government to perform a Site inspection in May 2024. This Site inspection was in addition to a previous, three-day Site inspection during the Government's pre-suit investigation.

This resulted in Mr. Layne expending significant resources resisting the Government's overreach during the pendency of his dispositive motion. The Court ultimately dismissed the Government's first Complaint, agreeing with Mr. Layne's position that the Government had failed to plead sufficient facts to state a claim. (*See* Docs. 56, 57.) Now, the Government attempts to take a second bite at the apple in filing an Amended Complaint. Yet, once again, the Government has failed to meet its pleading standard in its Amended Complaint. As a result, Mr. Layne has again sought dismissal. (*See* Docs. 63, 64.)

[4] For a more detailed discussion of this, Mr. Layne refers the Court to the Memorandum in Support of the previous Motion to Stay. (*See* Doc. 42 at 5-11.)

If granted, Defendants' Motion could end this case completely. If denied, a short stay will neither prejudice the Government nor its ability to prosecute its putative claim against Defendants, which it has had now for five years. Conversely, in the absence of a stay, Mr. Layne will continue to bear substantial burdens and expenditures of time, effort and money in litigating a case in which he argues that no jurisdiction exists under the CWA. If past is prologue, Mr. Layne anticipates that the Government will ramp up its discovery efforts during the pendency of the Motion to Dismiss the Amended Complaint. Accordingly, Mr. Layne requests that the Court briefly stay the case until that motion is resolved.

LEGAL STANDARD

A district court possesses the inherent power to stay proceedings and broad discretion in exercising that power. *Redding v. Mayorkas*, 2024 WL 663038, at *3 (E.D. Va. Feb. 5, 2024) (citing *Clinton v. Jones*, 520 U.S. 681, 707 (1997); *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)). "The Fourth Circuit has instructed that courts must 'balance the various factors relevant to the expeditious and comprehensive disposition of the causes of action on the court's docket' when deciding whether to enter a stay." *Id.* (citing *Maryland v. Universal Elections, Inc.*, 729 F.3d 370, 375 (4th Cir. 2013) (quoting *United States v. Ga. Pac. Corp.*, 562 F.3d 294, 296 (4th Cir. 1977)). In considering a motion to stay, a district court must "weigh competing interests and maintain an even balance." *Commonwealth of Virginia ex rel. Integra Rec LLC v. Countrywide Securities Corp.*, 2015 WL 222312, at *3 (E.D. Va. Jan. 14, 2015) (quoting *Sehler v. Prospect Mortg., LLC*, 2013 WL 5184216, at *2 (E.D. Va. Sept. 16, 2013)) (internal quotations omitted).

The Court should consider three factors in determining whether to grant a stay: (1) the interests of judicial economy; (2) hardship and equity to the moving party if the action is not stayed; and (3) potential prejudice to the non-moving party." *Gibbs v. Plain Green, LLC,* 331

F.Supp.3d 518, 525 (E.D. Va. 2018) (citations omitted); *see also Redding*, 2024 WL 663038, at *3 (collecting cases). The party seeking a stay must justify it by "clear and convincing circumstances outweighing potential harm to the party against whom it is inoperative." *Id*. (quoting *Williford v. Armstrong World Indus., Inc.*, 715 F.2d 124, 127 (4th Cir. 1983)). The court may also consider length of the stay as part of the potential prejudice to the non-moving party. *See Simpson v. LLAB Trucking, Inc.*, 2022 WL 2614876 at *1 (E.D. Va. Jan. 26, 2022). The decision whether to stay a case "lies within the substantial discretion of the court to control its docket." *Buzzell v. JP Morgan Chase Bank*, 2015 WL 5254768, at *1 (E.D. Va. Sept. 9, 2015). The Fourth Circuit has affirmed a district court's decision to stay discovery pending disposition of a Rule 12(b)(1) motion. *Thigpen v. U.S.*, 800 F.2d 393, 396-97 (4th Cir. 1986).

ARGUMENT

I. The Interests of Judicial Economy and Prejudice to Defendants Strongly Favor a Brief Stay Until the Court Rules on Defendants' Motion to Dismiss the Amended Complaint.

"A district court possesses the inherent power to stay actions in the considerations of economy of time and effort for itself, for counsel, and for litigants." *Commonwealth ex rel. Integra Rec LLC*, 2015 WL 222312, at *3 (internal quotations and citations omitted). "The interests of judicial economy favor reducing the burden of discovery on parties when the motion to dismiss raises potentially dispositive legal issues and 'the resolution of which may obviate the need for or limit discovery in this case.'" *Blankenship v. Napolitano*, 2019 WL 6173530, at *5 (S.D. W.Va. Nov. 19, 2019) (quoting *Slone v. State Auto Prop. & Cas. Ins. Co.*, 2019 WL 4733555 (S.D. W.Va. Sept. 26, 2019)).

Such is the case here. Defendants' Motion to Dismiss the Amended Complaint addresses the threshold issue of jurisdiction under the CWA. Thus, a ruling in Defendants' favor would end this case and eliminate the need for any further proceedings or discovery.

The procedural posture of this case also favors a brief stay. The Government just recently filed its Amended Complaint, and briefing on the Motion to Dismiss the Amended Complaint is progressing and will complete February 5, 2025. (*See* Doc. 66.) The Court has not yet entered any scheduling order since the Amended Complaint.

A brief stay also will avoid any further discovery disputes and likely Court intervention to resolve these issues. As discussed above and at length in the previous Motion to Stay, the Parties engaged in contested discovery, resulting in multiple filings with the Court. Those disputes became moot when the Court dismissed the Government's Complaint. A brief stay would avoid a repeat of the resource-draining process that the Parties engaged in before.

Additionally, the balance of equities weighs heavily in favor of a stay based on Mr. Layne's hardship in having to engage in discovery during the pendency of the dispositive motion. Mr. Layne already incurred significant expenditures of time, effort, and money during the pendency of the previous Motion to Dismiss, which was ultimately granted. These expenditures are non-recoverable and should not be compounded until the Court finds the Government has sufficiently pled CWA jurisdiction (which Defendants strongly contest). And it is Mr. Layne, not the Government, who has borne significant burdens for the Government's shortcomings. The pending motion challenges the sufficiency of the facts pled in the Amended Complaint and the existence of jurisdiction under the CWA. If granted, Mr. Layne would avoid incurring additional, significant fees and costs related to discovery.

Courts have held that the balancing of harm favors a stay when ruling on a dispositive motion might eliminate the need for some or all such discovery. *See Sheehan*, 2012 WL 1142709, at *1-2 ("[I]n balancing the harm produced by a stay of discovery against the possibility that the motion to dismiss will be granted and entirely eliminate the need for such discovery, this Court concludes that the motion to stay discovery and pretrial planning should be granted."); *see also Blankenship v. Trump*, 2020 WL 748874, at *3 (S.D. W.Va. Feb. 13, 2020) (finding that "a stay to decide the dispositive motion is appropriate inasmuch as a decision favorable to the defendant on the motion to dismiss may obviate the need for some or even all of such expansive discovery").

Contrast this with the Government's position. It has already had the benefit of years of pre-suit investigation and discovery during the pendency of the previous Motion to Dismiss. Still, the threshold issue of jurisdiction under the CWA remains pending.

The balance of equities strongly favors a brief stay here.

II. The Government Will Not Be Prejudiced by a Brief Stay and Defendants Have Already Provided Substantial Discovery Including a Site Inspection.

The Court "may also consider length of the stay as part of the potential prejudice to the non-moving party." *Simpson*, 2022 WL 2614876, at *1 (citations omitted). A stay at this stage is likely to be brief. Defendants filed the Motion to Dismiss the Amended Complaint on January 2, 2025. (Doc. 63.) While a non-moving party can suffer prejudice when "a stay is reasonably expected to cause a significant delay in proceedings," *see id*. at *3, there is no reason to anticipate that the length of the stay sought here will be prejudicial. The Court ruled expeditiously on the previous motion to dismiss.

Further, this is not a case in which no discovery has occurred at all. Rather, the Parties engaged in significant discovery during the pendency of the original Motion to Dismiss. This included an intensive and invasive Site Inspection. The Site Inspection—the primary discovery

issue raised by the Government previously as being time-sensitive—has been completed. And the Site Inspection and visits to neighboring properties have afforded the Government discovery on what it agrees are dispositive issues. In other words, they have benefited by gaining ***first-hand*** information on issues central to the case.

Additionally, the Court may evaluate any potential prejudice to the Government in the context of the years in which the Government investigated the allegations that form the basis of their Amended Complaint. The Government alleges that it first learned of potential CWA violations in January 2020, but did not file suit until November 2023. During that time, the Government obtained information and documents from Defendants, negotiated with other counsel for Defendants and conducted a three-day Site inspection with multiple experts and attorneys. The Government already obtained information during the pendency of Defendants' first Motion to Dismiss, and most importantly, obtained the Site inspection that they so strenuously sought. Having quite literally built its case for years, the Government cannot persuasively assert any prejudice from a brief stay of this case until the Court issues its ruling.

III. District Courts within the Fourth Circuit Have Similarly Stayed Discovery or Other Proceedings When a Dismissal Motion is Pending.

District courts have broad discretion to stay proceedings in advance of deciding a pending dispositive motion. *See Lismont v. Alexander Binzel Corp.*, 2014 WL 12527482, at *1 (E.D. Va. Jan. 14, 2014) (citations omitted). And numerous district courts within the Fourth Circuit have done so under circumstances similar to those here. *See, e.g.*, *Morris v. CrossCountry Mortgage, LLC*, 2023 WL 2541702 at *1-2 (E.D.N.C. Mar. 16, 2023) (granting temporary stay of discovery until court has ruled on defendants' dismissal motions and directing parties to submit a new discovery plan as needed after the court rules on the motions); *Trump*, 2020 WL 748874, at *1-5 (granting motion to stay discovery pending resolution of defendant's motion to dismiss);

Napolitano, 2019 WL 6173530, at *1-6 (granting motion to stay discovery and Rule 26(f) obligations pending resolution of dispositive motions); *Sheehan*, 2012 WL 1142709, at *1-2 (granting Government's motion to stay discovery and pretrial planning pending a decision on the Government's Rule 12(b)(1) and Rule 12(b)(6) motion to dismiss); *Bragg v. U.S.*, 2010 WL 3835080, at *1-2 (S.D.W.Va. Sept. 29, 2010) (granting Government's motion to stay discovery and all other proceedings pending a ruling on its motion to dismiss); *U.S. v. Daily Gazette Co.*, 2007 WL 7575700, at *1-3 (S.D.W.Va. Oct. 18, 2007) (granting motion to stay case in advance of ruling on defendant's motion to dismiss).[5]

Several of these cases are instructive as to why a stay is appropriate here. In *Sheehan*, the Department of Justice, as counsel for the Government, itself sought a motion to stay pending ruling on its motion to dismiss based on lack of subject matter jurisdiction pursuant to Rule 12(b)(1) and failure to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6). The Government argued that it would be "highly inefficient and burdensome to require discovery preparations and planning to proceed when the entire case may be decided on purely legal issues now pending before this Court." *Sheehan*, 2012 WL 1142709, at *1. The district court agreed with the Government's position. Likewise, in *Bragg*, the Government moved to stay discovery and all other proceedings, contending that discovery should not proceed prior to a ruling because

[5] This Court granted a limited motion to stay in a Fair Labor Standards Act case where the defendants filed motions to dismiss pursuant to Rules 12(b)(1) and 12(b)(6) asserting that the Court lacked subject matter jurisdiction and that the plaintiffs failed to state a claim upon which relief could be granted. *Hernandez v. KBR, Inc.*, 2023 WL 3355332, at *1-3 (E.D. Va. May 10, 2023) (Hudson, J.). In ruling on the motions to dismiss, this Court explained that it had previously granted a stay of the plaintiffs' motion for conditional certification pending ruling on the defendants' motions to dismiss: "Because Defendants' Motions to Dismiss challenge this Court's subject matter jurisdiction, the Court granted Defendants' Motion to Stay as to the issue of the Conditional Certification so that the Court could first address Defendants' Motions to Dismiss." *Id*. at *3.

it was seeking dismissal on sovereign immunity grounds. Again, the district court granted the Government's motion. The district court noted that the nature and complexity of the case – alleged failure to administer and enforce the Federal Mine Safety and Health Act – favored a stay:

> Regarding the nature and complexity of the action, the regulatory lapses alleged by plaintiffs will doubtless involve significant factual and expert discovery. In the event that the United States' dispositive motion is granted, any resources devoted to those time consuming and expensive efforts would be fruitless.

Bragg, 2010 WL 3835080, at *2.

The same factors the Government asserted in *Sheehan* and *Bragg* favor a brief stay of proceedings in this case. As in *Sheehan*, Defendants here have asserted a motion under both Rule 12(b)(1) for lack of subject matter jurisdiction and Rule 12(b)(6) for failure to state a claim. As in *Sheehan*, it would be highly inefficient and burdensome to require additional discovery preparations and planning to proceed here when the entire case may be decided on purely legal issues pending before this Court. As in *Bragg*, this case alleges violations of federal law that involves significant factual and expert discovery—time-consuming and expensive efforts that may be fruitless if the Court grants Defendants' Motion to Dismiss the Amended Complaint. And as the district court explained in *Bragg*, staying discovery in advance of deciding a pending dispositive motion is "an eminently logical means to prevent wasting the time and effort of all concerns, and to make the most efficient use of judicial resources." *Bragg*, 2010 WL 3835080, at *1 (quoting *Coastal States Gas Corp. v. Department of Energy*, 84 F.R.D. 278, 282 (D. Del. 1979)).

It is true that in other cases the Government has opposed a stay pending ruling on a dispositive motion. But courts have made clear that allegations of ongoing violations of federal law—which Defendants deny here—are not enough to defeat a stay. In *United States v. Daily Gazette Co.*, the Government alleged that the defendants violated federal antitrust laws and

opposed a stay pending ruling on a motion to dismiss. But the district court determined that a stay of "further action in this case pending final briefing and a decision on the pending dispositive motion" was the better course:

> The government's arguments opposing the requested stay are not without merit. The court has considered in particular the harm to the public in permitting an unabated violation of federal antitrust laws. Balanced against this noteworthy concern, however, is the fact that a ruling favorable to the defendants would effectively result in a finding that they did not contravene federal law. Should that conclusion come after significant time and expense has been devoted to unnecessary discovery, economic harm would redound to defendants…"

Daily Gazette, 2007 WL 7575700, at *2.

Here, Mr. Layne has and continues to incur substantial financial harm to proceed with discovery and related matters while his threshold jurisdictional defense remains pending. While Defendants have cooperated with the Government on numerous discovery matters previously, including the Site Inspection, the anticipated scope and magnitude of the Government's discovery and litigation demands favors a stay until the Court rules on Defendants' Motion to Dismiss the Amended Complaint.

CONCLUSION

WHEREFORE, Defendants respectfully request that the Court enter an order granting its Motion to Stay and staying all discovery pending this Court's ruling on Defendants' Motion to Dismiss the Amended Complaint for Lack of Subject Matter Jurisdiction and Failure to State a Claim.

Dated: January 17, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 17, 2025, I filed the forgoing electronically, which sent a notice of electronic filing to all counsel of record in this matter.

/s/ *Frank Talbott V*