

FILED

AUG 14 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EARTH ISLAND INSTITUTE;
SEQUOIA FORESTKEEPER,

Plaintiffs-Appellants,

v.

KEVIN ELLIOTT, in his official capacity
as Forest Supervisor of the Sequoia
National Forest; UNITED STATES
FOREST SERVICE,

Defendants-Appellees,

SIERRA FOREST PRODUCTS,

Intervenor-Defendant-
Appellee.

No. 18-16354

D.C. No.
1:17-cv-01320-LJO-SAB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O'Neill, District Judge, Presiding

Argued and Submitted August 6, 2019
Anchorage, Alaska

Before: TALLMAN, IKUTA, and N.R. SMITH, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Appellants Earth Island Institute and Sequoia Forestkeeper (collectively, “Earth Island”) appeal the district court’s order granting summary judgment to the United States Forest Service and other defendants.

The parties agree that this case is moot unless the “capable of repetition, yet evading review” exception applies. *See Matter of Bunker Ltd. Partnership*, 820 F.2d 308, 312 (9th Cir. 1987). The exception does not apply because Earth Island could have sought a stay of the challenged tree removal activities pending appeal in this case and can still seek a stay of such activities in two similar pending cases. Where a “prompt application for a stay pending appeal can preserve an issue for appeal, the issue is not one that will evade review.” *Headwaters, Inc. v. Bureau of Land Mgmt.*, 893 F.2d 1012, 1016 (9th Cir. 1989) (quoting *Am. Horse Protection Ass’n, Inc. v. Watt*, 679 F.2d 150, 151 (9th Cir. 1982) (per curiam)). Earth Island’s reliance on *Alaska Ctr. for Env’t v. U.S. Forest Serv.*, 189 F.3d 851 (9th Cir. 1999), and *Alcoa, Inc. v. Bonneville Power Admin.*, 698 F.3d 774 (9th Cir. 2012), is misplaced because in those cases, a stay or injunction would not have preserved the issue for appeal.¹

DISMISSED AS MOOT.

¹ Earth Island’s motion to take judicial notice of court documents filed in related cases (Docket Entry No. 36) is GRANTED.