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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

NORTHWEST ENVIRONMENTAL  
ADVOCATES,

Plaintiff,

v.

UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY,

Defendant.

CASE NO. C20-1362 MJP

ORDER DENYING JOINT  
MOTION UNDER FED. R. CIV. P.  
60(B)(6)

This matter comes before the Court on the Parties’ Joint Motion Under Fed. R. Civ. P. 60(b)(6). (Dkt. No. 70.) Having considered the Motion and all supporting materials, the Court DENIES the Motion.

**BACKGROUND**

The Court granted in part Plaintiff’s Motion for Summary Judgment, setting aside the EPA’s denial of Plaintiff’s petition and remanding the matter to the EPA for a “necessity

1 determination” under the Clean Water Act within 180 days of the Order. (Dkt. No. 57  
2 (“Order”).) Defendant then appealed the Court’s Order and the appeal remains pending. (Dkt.  
3 No. 64.) The Parties previously moved for stay of the 180-day compliance deadline, which the  
4 Court denied without prejudice. (Dkt. No. 69.) The Parties now “move this Court under Federal  
5 Rule of Civil Procedure 60(b)(6) to extend the deadline in its Order for EPA to act from 180 days  
6 to 240.” (Joint Mot. at 2 (Dkt. No. 70).) The Parties maintain that they require a 60-day extension  
7 of EPA’s deadline so that they can finalize “an agreement in principle that will benefit the public  
8 interest and advance the protection of aquatic life in Washington.” (*Id.*) According to the Motion,  
9 the Parties also need additional to obtain “necessary internal approvals from senior federal  
10 officials.” (*Id.*)

## 11 ANALYSIS

12 The Court reviews the question of jurisdiction before assessing the merits of the Parties’  
13 request.

### 14 A. Jurisdiction

15 The Court finds that it has jurisdiction over the request despite the pending appeal to  
16 make modifications under Rules 60 and 62.

17 “Once a notice of appeal is filed, the district court is divested of jurisdiction over the  
18 matters being appealed.” *Nat. Res. Def. Council, Inc. v. Sw. Marine Inc.*, 242 F.3d 1163, 1166  
19 (9th Cir. 2001). But there are exceptions to this judge-made rule. As is relevant here, a district  
20 court retains jurisdiction to modify an order granting injunctive relief. *See id.*; Fed. R. Civ. P.  
21 62(d). At first blush, this Rule seemingly has no application here because the Court’s Order on  
22 appeal did not enjoin Defendant and Plaintiff never sought injunctive relief. But that is not the  
23 end of the inquiry because an order on summary judgment may nonetheless be injunctive.  
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1           “The three fundamental characteristics of an injunction are that it is (1) directed to a  
2 party, (2) enforceable by contempt, and (3) designed to accord or protect some or all of the  
3 substantive relief sought by a complaint in more than [temporary] fashion.” In re Lorillard  
4 Tobacco Co., 370 F.3d 982, 986 (9th Cir. 2004) (quotation and citation omitted). Although the  
5 Parties failed to brief this issue or standard, the Court finds that all three elements apply to the  
6 Court’s Order. The Order directs the EPA, a party, to engage in the necessity determination  
7 process as mandated by the Clean Water Act, which was the relief Plaintiff sought in the  
8 complaint. And the Order is enforceable by contempt. See Sierra Club v. Ruckelshaus, 602 F.  
9 Supp. 892, 901-03 (N.D. Cal. 1984), amended, (N.D. Cal. Sept. 17, 1984) (finding the EPA and  
10 the EPA Administrator in contempt). The Court is therefore satisfied that the Order affords  
11 injunctive relief and that the Court has jurisdiction to entertain a modification to the Order under  
12 Rule 62(d). And the Court agrees that it also has authority under Rule 60(b) to modify the order  
13 pending appeal. See Prudential Real Est. Affiliates, Inc. v. PPR Realty, Inc., 204 F.3d 867, 880  
14 (9th Cir. 2000) (finding it “irrelevant” that a request to modify a preliminary injunction was  
15 characterized as a motion under Rule 60(b) or Rule 62).

16 **B. Request for Extension under Rule 60(b)(6)**

17           In their renewed Motion, the Parties newly invoke Rule 60(b)(6) as the basis for their  
18 request for a 60-day extension of EPA’s compliance, though they fail to brief the full standard.

19           “A party seeking relief under Rule 60(b)(6) must satisfy three requirements.” Bynoe v.  
20 Baca, 966 F.3d 972, 979 (9th Cir. 2020). The three requirements are: (1) the motion cannot be  
21 premised on another ground delineated in Rule 60; (2) it must be filed within a reasonable time;  
22 and (3) it must demonstrate “extraordinary circumstances” justifying reopening the judgment. Id.  
23 (citation and quotation omitted). “Extraordinary circumstances occur where there are “other  
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1 compelling reasons” for opening the judgment.” Id. (quoting Klapprott v. United States, 335 U.S.  
2 601, 613 (1949)). “In considering whether there is an ‘extraordinary’ circumstance for purposes  
3 of a Rule 60(b)(6) motion, we consider a number of factors, including the degree of connection  
4 between the extraordinary circumstance and the decision for which reconsideration is sought.”  
5 Mitchell v. United States, 958 F.3d 775, 786 (9th Cir.), cert. denied, 141 S. Ct. 216 (2020)  
6 (citation and quotation omitted). “[T]he decision to grant Rule 60(b)(6) relief is a case-by-case  
7 inquiry that requires the trial court to intensively balance numerous factors, including the  
8 competing policies of the finality of judgments and the incessant command of the court’s  
9 conscience that justice be done in light of all the facts.” Phelps v. Alameida, 569 F.3d 1120, 1133  
10 (9th Cir. 2009).

11 The Parties have failed to satisfy all three elements of Rule 60(b)(6), which the Court  
12 reviews.

13 As to the first element, the Court is satisfied that the request is not premised on any other  
14 ground in Rule 60.

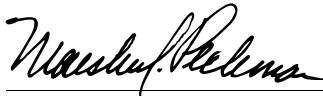
15 As to the second element, the Court finds limited, but sufficient evidence that the request  
16 is timely. The Parties asked the Court to modify the Order roughly five weeks before the  
17 deadline for compliance. (See Order on Cross-Motions for Summary Judgment (Dkt. No. 57)  
18 (setting June 27, 2022 as the compliance deadline); (Joint Motion to Stay (Dkt. No. 66) (filed  
19 May 20, 2022).) This shows timeliness. But the Court cannot overlook the fact that the Parties  
20 fail to explain when they began to negotiate a settlement. And the supporting declaration from  
21 Deborah G. Nagle provides no indication that EPA has done anything to comply with the Court’s  
22 Order. (Dkt. No. 70-1.) Instead, the Declaration speaks only in the conditional about what EPA  
23 “would” or could” do to make the necessity determination not what affirmative actions have  
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The clerk is ordered to provide copies of this order to all counsel.

Dated June 21, 2022.



Marsha J. Pechman  
United States Senior District Judge