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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Center for Biological Diversity, et al.,

10 Plaintiffs,

11 v.

12 Alejandro Mayorkas, et al.,

13 Defendant.  
14

No. CV-17-00163-TUC-CKJ

**ORDER**

15  
16 Before the Court is Plaintiffs’ Motion for Partial Reconsideration. (Doc. 83) For  
17 the reasons that follow, Plaintiffs’ motion is denied, and this case remains closed.

18 **PROCEDURAL HISTORY**

19 On August 23, 2021, the Court entered an Order granting in part and denying in part  
20 Plaintiffs’ motion for summary judgment and granting in part and denying in part  
21 Defendants’ cross-motion for summary judgment. (Doc. 78) The Court determined that  
22 Defendants had violated the National Environmental Policy Act (“NEPA”), 42 U.S.C. §  
23 4321 *et seq.*, but that they had not violated Section 7 of the Endangered Species Act  
24 (“ESA”), 16 U.S.C. § 1531 *et seq.* *Id.* The same day it issued its Order, the Court entered  
25 an Amended Judgment of Dismissal in a Civil Case. (Doc. 80) On September 17, 2021,  
26 Plaintiffs filed their Motion for Partial Reconsideration. (Doc. 83) On October 15, 2021,  
27 Defendants filed their Opposition to Plaintiffs’ Motion for Reconsideration (Doc. 86); and  
28 on October 22, 2021, Plaintiffs filed their Reply in Support of Motion for Partial

1 Reconsideration (Doc. 87). This Order follows.

## 2 **LEGAL STANDARD**

3 “A district court may reconsider its grant of summary judgment under either Federal  
4 Rule of Civil Procedure 59(e) (motion to alter or amend a judgment) or Rule 60(b) (relief  
5 from judgment).” *Sch. Dist. No. 1J, Multnomah Cnty., Or. v. ACandS, Inc.*, 5 F.3d 1255,  
6 1262 (9th Cir. 1993). “Although Rule 59(e) permits a district court to reconsider and  
7 amend a previous order, the rule offers an extraordinary remedy, to be used sparingly in  
8 the interests of finality and conservation of judicial resources.” *Kona Enters., Inc. v. Est.*  
9 *of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (internal quotation marks and citation  
10 omitted). “[A] motion for reconsideration should not be granted, absent highly unusual  
11 circumstances, unless the district court is presented with newly discovered evidence,  
12 committed clear error, or if there is an intervening change in the controlling law.” 389  
13 *Orange St. Partners v. Arnold*, 179 F.3d 656, 665 (9th Cir. 1999). A motion for  
14 reconsideration “may *not* be used to raise arguments or present evidence for the first time  
15 when they could reasonably have been raised earlier in the litigation.” *Kona Enters.*, 229  
16 F.3d at 890. “Nor is reconsideration to be used to ask the court to rethink what it has  
17 already thought through.” *Rowe ex rel. Rowe v. Bankers Life & Cas. Co.*, 572 F. Supp. 2d  
18 1138, 1147 (D. Ariz. 2008), *clarified on denial of reconsideration* (Sept. 17, 2008). “[A]  
19 party seeking reconsideration must show more than a disagreement with the Court’s  
20 decision, and recapitulation of the cases and arguments considered by the court before  
21 rendering its original decision fails to carry the moving party’s burden.” *Cachil Dehe Band*  
22 *of Wintun Indians of Colusa Indian Cmty. v. California*, 649 F. Supp. 2d 1063, 1070 (E.D.  
23 Cal. 2009) (internal quotation marks and citation omitted).

## 24 **DISCUSSION**

25 Plaintiffs bring their motion for partial reconsideration arguing that the Court’s  
26 denial of its preferred remedy for Defendants’ NEPA violation was “a manifest error of  
27 law,” which warrants reconsideration. (Doc. 83 at 13) Despite the Court’s ruling to the  
28 contrary, Plaintiffs also argue that Defendants have yet to rectify their NEPA violation, *id.*

1 at 14-17, and that their lawsuit was filed in a timely manner, *id.* at 17-19. The Court  
2 declines to entertain Plaintiffs’ second and third arguments, as they simply rehash  
3 Plaintiffs’ arguments on summary judgment or reflect various disagreements with the  
4 Court’s decision. These arguments also fail to reflect the “highly unusual circumstances”  
5 under which motions for reconsideration are granted. *See 389 Orange St.*, 179 F.3d at 665.

6 As it concerns Plaintiffs’ contention that the Court committed clear error by  
7 interpreting their repeated requests for supplemental environmental analysis as requests for  
8 mandatory injunctive relief,<sup>1</sup> the Court disagrees. “A district court has broad latitude in  
9 fashioning equitable relief when necessary to remedy an established wrong,” *High Sierra*  
10 *Hikers Ass’n v. Blackwell*, 390 F.3d 630, 641 (9th Cir. 2004) (internal quotation marks and  
11 citation omitted), and “courts have long held that relief for a NEPA violation is subject to  
12 equity principles,” *Pit River Tribe v. U.S. Forest Serv.*, 615 F.3d 1069, 1080–81 (9th Cir.  
13 2010). “Vacatur is [also] a species of equitable relief and courts are not mechanically  
14 obligated to vacate agency decisions that they find invalid.” *Pac. Rivers Council v. U.S.*  
15 *Forest Serv.*, 942 F. Supp. 2d 1014, 1017 (E.D. Cal. 2013). Under well-established  
16 principles governing the award of equitable relief in federal courts, “a court must balance  
17 the competing claims of injury and must consider the effect on each party of the granting  
18 or withholding of the requested relief.” *Amoco Prod. Co. v. Vill. of Gambell, AK*, 480 U.S.  
19 531, 542 (1987).

20 Plaintiffs’ first request for injunctive relief appeared in their First Amended  
21 Complaint. (Doc. 14) There, Plaintiffs requested that the Court “[i]ssue a mandatory  
22 injunction requiring Defendants to comply with the requirements of NEPA, the ESA, and  
23 those laws’ implementing regulations[.]” *Id.* at 54. Plaintiffs continued their requests for  
24 injunctive relief throughout their amended Memorandum in Support of Motion for  
25 Summary Judgment. *See* Doc. 66 at 9 (“compel [CBP] to complete a long overdue and  
26 sorely needed supplemental reexamination of the southern border enforcement program’s

27 <sup>1</sup> *See Wilderness Watch v. Vilsack*, 229 F. Supp. 3d 1170, 1183 (D. Idaho 2017) (“A  
28 mandatory injunction orders a responsible party to take action.”); *Wilson v. Amoco Corp.*,  
989 F. Supp. 1159, 1171 (D. Wyo. 1998) (“Injunctions that disturb the status quo, by  
requiring some positive act, are denominated mandatory injunctions.”).

1 environmental impacts pursuant to [NEPA]”); *id.* at 10 (“grant Plaintiffs’ motion for  
2 summary judgment, and direct CBP to complete supplemental NEPA analysis within a  
3 time certain”); *id.* at 26 (“Defendants have a duty to consider supplementing the 2001  
4 SPEIS in a manner that is compliant with NEPA and the APA”); *id.* at 27 (“[the]  
5 Determination should be vacated, and CBP directed to initiate and complete a supplemental  
6 PEIS by a date certain”); *id.* at 37 (“that demand examination in a supplemental PEIS”);  
7 *id.* at 38 (“consider the programmatic impact of CBP border enforcement actions on  
8 endangered species, and demand[ ] preparation of supplemental NEPA analysis”); *id.* at 47  
9 (“remand[ ] to CBP with direction to initiate and complete the NEPA process to further  
10 supplement the PEIS by a date-certain”).

11 In response to Plaintiffs’ requests that the Court instruct Defendants to issue  
12 supplemental programmatic environmental impact statements to remedy their NEPA  
13 violation, the Court observed:

14 With the exception of Defendants’ decision to withdraw from programmatic  
15 environmental analysis in 2019, Plaintiffs complain of agency non-activity  
16 that has failed to result in any demonstrated adverse environmental  
17 consequences due, in part, to the fact that Defendants complied with NEPA  
18 requirements through individual, project-specific environmental  
19 assessments. As a result of this litigation, Defendants have also thoroughly  
20 evaluated and explained the “hard look” criteria that the Court determined  
21 was absent from the Administrative Record when the agencies made their  
22 decisions years ago. Defendants’ recent activity has mitigated any  
23 prospective harm that Plaintiffs seek to remedy, and the Administrative  
24 Record fails to indicate detrimental environmental consequences as a result  
25 of Defendants’ NEPA violations.

23 In many ways, the claims at hand were best suited for litigation and injunctive  
24 relief more than a decade ago. To grant Plaintiffs’ request for an injunction  
25 at this point would be duplicative, counter-intuitive, and a misallocation of  
26 agency resources. The interests of the public would not be served by updating  
27 environmental impact statements which have since been withdrawn and that  
28 no longer serve as guideposts for future agency activity. While Defendants’  
failure to contemporaneously document justification for their internal  
decisions constitute NEPA violations, such failure, in this case, does not  
necessitate injunctive relief.

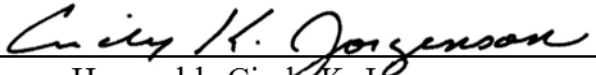
1 (Doc. 78 at 21-22) (internal citations omitted).

2 While Plaintiffs may disagree with the Court's reasoning or its interpretation of their  
3 requests to have a government agency conduct unnecessary supplemental environmental  
4 analyses as demands for injunctive relief, the Court did not commit clear error in fashioning  
5 an equitable remedy that was commensurate with Defendants' NEPA violation. Whether  
6 in response to a request for declarative relief, injunctive relief, or vacatur and remand, the  
7 Court explicitly balanced the competing claims of injury and considered the effects on  
8 each party before withholding Plaintiffs' requested relief. Accordingly, Plaintiffs' motion  
9 for partial reconsideration is denied, and this case remains closed.

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11 **IT IS ORDERED:**

- 12 1. Plaintiffs' Motion for Partial Reconsideration (Doc. 83) is DENIED.  
13 2. This case remains closed.

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15 Dated this 4th day of January, 2022.

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17   
18 Honorable Cindy K. Jorgenson  
19 United States District Judge  
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