

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF CALIFORNIA

3 FIREBAUGH CANAL WATER DISTRICT and) 1:88-cv-00634-LJO/DLB
4 CENTRAL CALIFORNIA IRRIGATION DISTRICT,) 1:91-cv-00048-LJO/DLB
5) (Partially Consolidated)
6 Plaintiffs,)
7)
8 v.) **ORDER GRANTING**
9) **JOINT MOTION FOR**
10 UNITED STATES OF AMERICA, *et al.*,) **PARTIAL STAY**
11)
12 Defendants, and)
13)
14 WESTLANDS WATER DISTRICT, *et al.*,)
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16 Defendants-in-Intervention.)
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13 The Court’s Partial Judgment on Findings of Fact and Conclusions of Law Re: Statutory
14 Duty, filed March 12, 1995, enjoined Federal Defendants to provide drainage to the San Luis
15 Unit of the Central Valley Project to comply with Section 1(a) of the San Luis Act of 1960. ECF
16 No. 442, at 11-12. The partial judgment further provided that “[t]his court reserves jurisdiction
17 to enforce compliance with this order and to enable the parties to apply to this court for such
18 other orders as may be necessary for the implementation of this judgment.” ECF No. 442, at 12.
19 The Order Modifying Partial Judgment On Findings of Fact and Conclusions of Law Re:
20 Statutory Duty to Conform to Ninth Circuit Opinion, filed December 18, 2000 (ECF No. 654),
21 reiterated that the “[t]he Court reserves jurisdiction to enforce the provisions of the Partial
22 Judgment, as amended herein.” ECF No. 654, at 5. In furtherance of the partial judgment, the
23 Federal Defendants committed to begin implementation of a drainage plan selected in the 2007
24 San Luis Feature Re-Evaluation Record of Decision (“2007 ROD”) in accordance with a Control
25 Schedule which the Court incorporated into a Scheduling Order in this case. *See* ECF No. 758.
26 Among other things, the Scheduling Order provided that “[n]othing in this Order precludes the
27 Federal Defendants from discussing with other Parties alternative means or locations of
28 providing drainage service within the San Luis Unit.” *Id.* at 2.

1 In recent status reports advising the Court on their implementation of the drainage plan,
2 Federal Defendants have reported on discussions they have had with Westlands Water District
3 (“Westlands”) on a potential drainage settlement. See ECF No. 967, at 6; ECF No. 980, 3-4;
4 ECF No. 1000, at 3-4. On September 16, 2015, Federal Defendants reported that the United
5 States and Westlands had reached a settlement, and filed a Notice with the Court attaching a
6 copy of the executed Settlement Agreement (“Settlement”). ECF No. 1001. The Settlement
7 addresses the management of drainage within Westlands and settles litigation over drainage
8 service between the United States and Westlands. Implementation of the Settlement will depend
9 on the enactment of authorizing federal legislation.

10 Now before the Court is a Joint Motion for Partial Stay filed by Federal Defendants and
11 Westlands. The Joint Motion requests that the Court stay, until January 15, 2017, Federal
12 Defendants’ compliance with the partial judgment and subsequent Orders in this case requiring
13 them to implement drainage service within Westlands. The partial stay requested in the Joint
14 Motion is limited geographically to Westlands; it does not request a stay regarding Federal
15 Defendants’ implementation of drainage service in other parts of the San Luis Unit. The partial
16 stay requested is also limited temporally to the time between the present and January 15, 2017,
17 the date on which the Settlement becomes voidable if authorizing legislation is not enacted.
18 Through the Joint Motion, the Federal Defendants and Westlands seek to limit the expenditure of
19 federal appropriations on the implementation of the plan selected in the 2007 ROD within
20 Westlands while Congress considers legislation that would authorize the Settlement and an
21 approach to drainage service that may differ, and be less costly, than Federal Defendants’ plan.
22 In support of the Joint Motion, Federal Defendants and Westlands have submitted the
23 Declaration of Jason Phillips, who summarizes the estimated costs involved in implementing
24 Federal Defendants’ plan within Westlands. Federal Defendants and Westlands have also
25 submitted the Declarations of Jose Gutierrez and Phillip Ross, who assert that, under current
26 conditions of water shortage and groundwater hydrology, the partial stay requested in the Joint
27 Motion will not result in harm to landowners within Westlands or to lands outside of Westlands.

1 The Court has also considered the responses to the Joint Motion. Contra Costa County,
2 Contra Costa County Water Agency, Natural Resources Defense Council, and The Bay Institute
3 (collectively, “Environmental Intervenors”) do not object to the proposed partial stay, but
4 reiterate that their non-opposition does not indicate “approval, consent, or acquiescence” with
5 respect to the Settlement, which Environmental Intervenors asserts “raises serious legal and
6 policy concerns, and, if approved and implemented, could cause serious adverse impacts to
7 Environmental Intervenors and the interests they represent.” ECF No. 1006. Likewise, Firebaugh
8 Canal Water District and Central California Irrigation District (collectively, “Plaintiffs”), do not
9 object to the proposed partial stay, with the understanding that this non-opposition does not
10 indicate consent or waiver in any way. ECF No. 1007. Plaintiffs assert that a comprehensive
11 drainage proposal that includes the Northerly Area and the Grasslands Bypass Project is essential
12 to evaluating any proposed alternative to the currently-operative 2007 ROD. Accordingly, their
13 non-opposition is “with the understanding that” Reclamation will rapidly complete “the proposed
14 settlement, if any, with the Northerly San Luis Unit Contractors and the participants in the
15 Grasslands Bypass Project ... so that the Court and United States Congress ... may see the total
16 outline of the proposed alternative.” *Id.* at 2.

17 Having reviewed all papers submitted with regard to the Joint Motion, the Court is
18 satisfied that the partial stay requested by Federal Defendants and Westlands will not harm the
19 public interest and serves the interest of judicial and Party economy. Therefore, IT IS HEREBY
20 ORDERED that the Joint Motion is GRANTED, and that Federal Defendants’ compliance with
21 the partial judgment and subsequent Orders requiring them to implement drainage service within
22 Westlands is hereby STAYED until January 15, 2017, unless extended by further Order of this
23 Court upon a noticed motion. During the period of the stay, Federal Defendants may, consistent
24 with applicable law, redirect appropriations designated for drainage activities within Westlands
25 to other, high-priority activities.

26 This order in no way suspends the Parties’ obligations to provide periodic status reports
27 to the Court. If, upon submission of the next status report, due in April 2016, little to no progress
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1 has been made toward completion of the terms of the Settlement, the Court will consider more
2 stringent reporting requirements, among other measures.

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IT IS SO ORDERED.

Dated: October 26, 2015

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE