

1 **DISCUSSION**

2 District courts have the inherent power to control their dockets and “in the exercise of that
3 power, they may impose sanctions including, where appropriate . . . dismissal of a case.” Thompson
4 v. Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice,
5 based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply
6 with local rules. See, e.g., Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995)(dismissal for
7 noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal
8 for failure to comply with an order requiring amendment of complaint); Malone v. U.S. Postal Service,
9 833 F.2d 128, 130 (9th Cir. 1987)(dismissal for failure to comply with court order).

10 In determining whether to dismiss an action for lack of prosecution, the court must consider
11 several factors: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to
12 manage its docket; (3) the risk of prejudice to the Respondents; (4) the public policy favoring
13 disposition of cases on their merits; and, (5) the availability of less drastic alternatives. Henderson v.
14 Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986); Carey v. King, 856 F.2d 1439 (9th Cir. 1988).

15 The Court finds that the public’s interest in expeditiously resolving this litigation and the
16 Court’s interest in managing the docket weigh in favor of dismissal, as this case has been pending
17 since April 18, 2013. The third factor, risk of prejudice to Respondent, also weighs in favor of
18 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay in
19 prosecuting an action. Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor --
20 public policy favoring disposition of cases on their merits -- is greatly outweighed by the factors in
21 favor of dismissal discussed herein. Finally, a court’s warning to a party that failure to obey the
22 court’s order will result in dismissal satisfies the “consideration of alternatives” requirement. Ferdik
23 v. Bonzelet, 963 F.2d at 1262; Malone, 833 at 132-33; Henderson, 779 F.2d at 1424. The Court’s
24 order of May 24, 2005, expressly stated: “Petitioner is forewarned that his failure to comply with this
25 order may result in an Order of Dismissal or a Recommendation that the petition be dismissed
26 pursuant to Local Rule 110.” (Doc. 4, p. 10). Thus, Petitioner had adequate warning that dismissal
27 would result from his noncompliance with the Court’s order. Moreover, Local Rule 110 provides that
28 a “failure of counsel or of a party to comply with these Local Rules or with any order of the Court may

1 be grounds for the imposition by the Court of any and all sanctions . . . within the inherent power of
2 the Court.”

3 From the foregoing chronology and analysis, it is apparent that Petitioner has not prosecuted
4 this case in good faith and with diligence, and is therefore in violation of the Court’s own Local Rules
5 as well as the minimum federal standards for prosecuting cases in the District Court. Accordingly, the
6 Court will recommend that the petition be dismissed for failure to prosecute.

7 **RECOMMENDATION**

8 Accordingly, the Court HEREBY RECOMMENDS that the petition for writ of habeas corpus
9 (Doc. 1), be DISMISSED for Petitioner’s failure to prosecute.

10 This Findings and Recommendation is submitted to the United States District Court Judge
11 assigned to the case pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local
12 Rules of Practice for the United States District Court, Eastern District of California. Within twenty-
13 one (21) days after being served with a copy, any party may file written objections with the Court and
14 serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s
15 Findings and Recommendations.” Replies to the objections shall be served and filed within ten (10)
16 court days (plus three days if served by mail) after service of the objections. The Court will then
17 review the Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised
18 that failure to file objections within the specified time may waive the right to appeal the District
19 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

20
21 IT IS SO ORDERED.

22 Dated: August 8, 2013

23 /s/ Jennifer L. Thurston
24 UNITED STATES MAGISTRATE JUDGE