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4 **UNITED STATES DISTRICT COURT**
5 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

6
7 **NORTH COAST RIVERS ALLIANCE, et al.,**

8 **Plaintiffs,**

9 **v.**

10 **UNITED STATES DEPARTMENT OF THE**
11 **INTERIOR, et al.,**

12 **Defendants,**

13 **WESTLANDS WATER DISTRICT, et al.,**

14 **Intervenor-Defendants.**
15

1:16-cv-00307-LJO-SKO

**ORDER REQUESTING ADDITIONAL
SUPPLEMENTAL FILING RE
MOOTNESS**

16 This case concerns approval by the United States Department of the Interior and its member
17 agency, the United States Bureau of Reclamation (collectively, “Federal Defendants,” “Reclamation,” or
18 the “Bureau”), of six interim renewal contracts that authorize delivery of water from March 1, 2016,
19 through February 28, 2018, from federal reclamation facilities to certain water districts served by the
20 federal Central Valley Project (“CVP”) (“2016-18 Interim Contracts”). ECF No. 64 (First Amended and
21 Supplemental Complaint (“FASC”). The 2016-18 Interim Contracts at issue in this case provide water
22 service to Westlands Water District (“Westlands”), Santa Clara Valley Water District (“Santa Clara”),
23 and Pajaro Valley Water Management Agency (“Pajaro”) (collectively, “Interim Contractors”). *See*
24 FASC at ¶ 2. A coalition of environmental organizations led by the North Coast Rivers Alliance
25 (collectively, “Plaintiffs”) allege in the FASC’s first claim for relief that Federal Defendants issued a

1 deficient Revised Environmental Assessment (“EA”) and associated Finding of No Significant Impact
2 (“FONSI”) prior to approval of the 2016-18 Interim Contracts, in violation of the National
3 Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.*, and Administrative Procedure Act
4 (“APA”), 5 U.S.C. §§ 701-706. FASC at ¶¶ 45-65. The second claim for relief alleges that Reclamation
5 violated NEPA by failing to prepare an Environmental Impact Statement (“EIS”) for the 2016-18
6 Interim Contracts. *Id.* at ¶¶ 56-59. Currently pending before this Court are cross motions for summary
7 judgment on the merits of remaining claims in this case. ECF Nos. 85, 90, 92.

8 The Court recently requested a report from Federal Defendants concerning “the status of any
9 NEPA compliance for the long-term contracts corresponding to the Interim Contracts at issue in this
10 case.” ECF No. 99. The Court made this request “because it does not have time to spare and must avoid
11 allocating scarce judicial resources toward the resolution of matters that may be mooted in the near
12 future.” *Id.* Federal Defendants filed a status report in which they assert:

13 As of this filing, Reclamation no longer intends to pursue the issuance of
14 new long-term water service contracts to Westlands under the authority of
15 [Central Valley Project Improvement Act (“CVPIA”), Pub. L. No. 102-
16 575,] § 3404. Rather, based on the authority and direction provided in the
17 2016 Water Infrastructure Improvements of the Nation (“WIIN”) Act,
18 Pub. L. 114-322, § 4011, Reclamation intends to convert Westlands’
19 existing water service contracts into repayment contracts (which include
20 existing water delivery provisions).

21 Section 4011 of the WIIN Act directs the Secretary of the Interior, upon
22 the request of a contractor with a long-term water service contract, to
23 convert that contract to a repayment contract under specified terms.
24 Westlands Water District has requested conversion of the water-service
25 contracts corresponding to the Interim Contracts to repayment contracts
under the WIIN Act. Reclamation thus construes the conversion of the
contracts under the direction of the WIIN Act as a non-discretionary
action that is not subject to the requirements of NEPA.

 At this time, Reclamation cannot be certain when the WIIN Act
conversion of any of Westlands’ contracts might be completed, except that
Reclamation would need to complete any such conversion before the
authority provided by the WIIN Act expires on December 16, 2021. See
WIIN Act, § 4013.

Id. at ¶¶ 3-5.

1 The report raises more questions than it answers. The Court cannot tell whether Federal
2 Defendants are being deliberately cryptic or whether the Court simply failed to make clear the
3 underlying threshold jurisdictional question(s) that must be answered. This case already is technically
4 moot because the 2016-18 Interim Contracts have expired. However, pursuant to the Ninth Circuit’s
5 ruling in *Pacific Coast Federation of Fishermen’s Associations v. U.S. Dep’t of the Interior*, 655 F.
6 App’x 595, 597 (9th Cir. 2016), “[t]he short duration and serial nature of Reclamation’s interim water
7 contracts place plaintiffs’ claims within the mootness exception for disputes capable of repetition yet
8 evading review.” What the Court needs information on now is whether this mootness exception still
9 applies to the contracts at issue in this case. Even though Federal Defendants do not appear to be
10 encouraging the Court to revisit the matter, mootness is a jurisdictional issue the Court must nonetheless
11 address *sua sponte*. *Bernhardt v. County of Los Angeles*, 279 F.3d 862, 871 (9th Cir. 2002) (raising *sua*
12 *sponte* mootness and the capable of repetition yet evading review exception because it is a question of
13 subject matter jurisdiction); *see also Ackley v. W. Conference of Teamsters*, 958 F.2d 1463, 1469 (9th
14 Cir. 1992) (“It is the defendant, not the plaintiff, who must demonstrate that the alleged wrong will not
15 recur.”). “A mere speculative possibility of repetition is not sufficient. There must be a cognizable
16 danger, a reasonable expectation, of recurrence for the repetition branch of the mootness exception to be
17 satisfied.” *Williams v. Alioto*, 549 F.2d 136, 143 (9th Cir. 1977).

18 Among other things, Federal Defendants’ status report indicates that future contracts between
19 Reclamation and Westlands will not be executed under CVPIA § 3404; they will instead be converted
20 into repayment contracts pursuant to the WIIN Act. In addition, the status report states that Reclamation
21 “construes the conversion of the contracts under the direction of the WIIN Act as a non-discretionary
22 action that is not subject to the requirements of NEPA.” But, what exactly Federal Defendants mean by
23 this is unclear. Do they mean to suggest the Westlands contracts will no longer be subjected to any
24 NEPA review? If so, without expressing any opinion as to the merits of that assertion, adopting such an
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