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

NORTH COAST RIVERS ALLIANCE, et al.,

Plaintiffs,

v.

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

Defendants,

WESTLANDS WATER DISTRICT, et al.,

Intervenor-Defendants.

1:16-cv-00307-LJO-SKO

**ORDER RE STATUS OF PENDING
CROSS MOTIONS FOR SUMMARY
JUDGMENT**

This case concerns approval by the United States Department of the Interior and its member agency, the United States Bureau of Reclamation (collectively, “Federal Defendants,” “Reclamation,” or the “Bureau”), of six interim renewal contracts that authorized delivery of water from March 1, 2016, through February 28, 2018, from federal reclamation facilities to certain water districts served by the federal Central Valley Project (“CVP”) (“2016-18 Interim Contracts”). ECF No. 64, First Amended and Supplemental Complaint (“FASC”). The 2016-18 Interim Contracts at issue in this case provided water service to Westlands Water District (“Westlands”), Santa Clara Valley Water District (“Santa Clara”), and Pajaro Valley Water Management Agency (“Pajaro”) (collectively, “Interim Contractors”). *See* FASC at ¶ 2. The 2016-18 Interim Contracts are part of a long line of two-year interim contracts executed in recent years to provide CVP water to contractors with expired long-term water service

1 contracts, pending the anticipated execution of new long-term water service contracts after the
2 completion of appropriate environmental review. *See* Central Valley Project Improvement Act
3 (“CVPIA”), Pub. L. No. 102-575, 106 Stat. 4600 (1992), §§ 3402, 3404.

4 A coalition of environmental organizations led by the North Coast Rivers Alliance (collectively,
5 “Plaintiffs”) allege in the FASC’s first claim for relief that Federal Defendants issued a deficient
6 Revised Environmental Assessment (“EA”) and associated Finding of No Significant Impact (“FONSI”)
7 prior to approval of the 2016-18 Interim Contracts, in violation of the National Environmental Policy
8 Act (“NEPA”), 42 U.S.C. § 4321 *et seq.*, and Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-
9 706. FASC at ¶¶ 45-65. The second claim for relief alleges that Reclamation violated NEPA by failing
10 to prepare an Environmental Impact Statement (“EIS”) for the 2016-18 Interim Contracts. *Id.* at ¶¶ 56-
11 59. The latter claim was dismissed on March 9, 2018. ECF No. 78. Currently pending before this Court
12 are cross-motions for summary judgment on the merits of certain aspects of the remaining claims in this
13 case.¹ ECF Nos. 85, 90, 92.

14 In late February 2019, the Court requested input from the parties addressing the issue of
15 mootness. ECF Nos. 99 & 101. The backdrop for the mootness inquiry includes the Ninth Circuit’s
16 ruling in *Pacific Coast Fed’n of Fishermen’s Associations v. U.S. Department of the Interior*, 655 F.
17 App’x 595, 597 (9th Cir. 2016), which held that challenges to interim contracts like those at issue in this
18 case are not moot, even though the relevant contract period has expired, because “[t]he short duration
19 and serial nature of Reclamation’s interim water contracts place plaintiffs’ claims within the mootness
20 exception for disputes capable of repetition yet evading review.” *Id.* However, on March 12, 2019, in
21 response to the Court’s request for supplemental briefing, the United States revealed that Reclamation
22 “no longer intends to pursue the issuance of new long-term water service contracts to Westlands under
23

24 ¹ As Reclamation points out, *see* ECF No. 102 at 2, Plaintiffs do not address the adequacy of the Santa Clara and Pajaro
25 contracts in their motion for summary judgment, ECF No. 85-1, which, given that the remaining APA claim in this case is to
be decided on cross-motions for summary judgment, renders any such claim abandoned as to the Santa Clara and Pajaro
contracts.

1 the authority of CVPIA § 3404. Rather, based on the authority and direction provided in the 2016 Water
2 Infrastructure Improvements of the Nation (“WIIN”) Act, Pub. L. 114-322, § 4011, Reclamation intends
3 to convert Westlands’ existing water service contracts into repayment contracts,” which, according to
4 Reclamation, will not be “subject to the requirements of NEPA.” ECF No. 100 at ¶¶ 3-4. As of March
5 12, 2019, Reclamation indicated it could not be “certain when the WIIN Act conversion of any of
6 Westlands’ contracts might be completed, except that Reclamation would need to complete any such
7 conversion before the authority provided by the WIIN Act expires on December 16, 2021.” *Id.* at ¶ 5
8 (citing WIIN Act, § 4013).

9 On March 19, 2019, pointing out that it has a *sua sponte* obligation to determine whether a case
10 is moot, the Court again requested additional information from Reclamation:

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

ECF No. 101 at 3 (emphasis in original).

1 In response, in April 2019, the United States outlined the anticipated process for converting
2 under the WIIN Act long-term water service contracts (pursuant to which a contractor pays service
3 charges to Reclamation every year over a fixed term) into repayment contracts (pursuant to which the
4 contractor will repay remaining construction costs associated with water deliveries either in a lump sum
5 or in equal installments over a period not to exceed three years). ECF No. 102 at ¶ 7. Since that time, the
6 Court has requested and received two additional updates from the parties, the latest of which indicates
7 that Reclamation and Westlands “believe they are still on track to finalize Westlands’ WIIN Act contract
8 conversions before the end of February 2020.” ECF No. 109 at ¶ 3. Nonetheless, because the contract
9 conversion has not yet been finalized, Reclamation has begun the process of preparing the applicable
10 environmental review under NEPA related to the 2020-2022 interim renewal contract. *Id.*

11 The Court faces an enormously difficult dilemma. Plaintiffs’ claims, which concern a significant
12 federal water service contract, are not technically moot. Yet, all signs lead the Court to believe that the
13 issues to be adjudicated here will be rendered moot in the near future. At the same time, this Court is
14 facing an extraordinarily severe shortage of resources. While it strives to execute its Constitutional
15 function to adjudicate all cases before it, the Court cannot in good conscience ignore the fact that
16 expending its scarce resources on adjudication of this case is likely to waste time that could be re-
17 allocated to the many other matters before it—matters that are more likely to have lasting impact. This
18 Court must make these difficult choices because the other coordinate branches of government are failing
19 to provide it with sufficient resources. Should the parties share the Court’s concern about the availability
20 of judicial resources, they are encouraged to contact the offices of Senators Feinstein and Harris and/or
21 the White House. (This Court might find itself questioning the prudence of expending resources on this
22 matter even if judicial resources were more plentiful, but the resource issue makes the decision
23 framework all the starker.)

24 Accordingly, this Court will hold the pending motions in abeyance. Thirty (30) days from the
25 date of this order, and every 30 days thereafter until further notice, the United States shall file a brief

1 status report updating the Court on the progress of WIIN act conversions relevant to the claims in this
2 matter. Upon receipt of each status report, the Court will *sua sponte* reconsider its position on the
3 pending motions.

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5 IT IS SO ORDERED.

6 Dated: November 8, 2019

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

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