

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

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

15 In late February 2019, the court requested input from the parties addressing the issue of
16 mootness. (Doc. Nos. 99, 101.) The backdrop for the mootness inquiry includes the Ninth Circuit’s
17 ruling in *Pacific Coast Federation of Fishermen’s Associations v. U.S. Department of the Interior*, 655
18 F. App’x 595, 597 (9th Cir. 2016)², which held that challenges to interim contracts like those at issue in
19 this case are not moot, even though the relevant contract period has expired, because “[t]he short
20 duration and serial nature of Reclamation’s interim water contracts place plaintiffs’ claims within the
21 mootness exception for disputes capable of repetition yet evading review.” *Id.* However, on March 12,
22 2019, in response to the court’s request for supplemental briefing, the United States revealed that
23 Reclamation “no longer intends to pursue the issuance of new long-term water service contracts to
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25 ¹ In light of the court’s ongoing mootness concerns discussed below, the court ordered the pending
26 motions for summary judgment administratively terminated pending the re-noticing of those motions, if
27 appropriate, once the issue of mootness is resolved. (*See* Doc. No. 117.)

28 ² Citation to this unpublished Ninth Circuit opinion is appropriate pursuant to Ninth Circuit Rule 36-
3(b).

1 Westlands under the authority of CVPIA § 3404. Rather, based on the authority and direction provided
2 in the 2016 Water Infrastructure Improvements of the Nation (“WIIN”) Act, Pub. L. 114-322, § 4011,
3 Reclamation intends to convert Westlands’ existing water service contracts into repayment contracts,”
4 which, according to Reclamation, will not be “subject to the requirements of NEPA.” (Doc. No. 100 at
5 ¶¶ 3–4.) The court ordered the United States to file periodic status reports addressing the progress of
6 these WIIN Act conversions. (See Doc. No. 117.) As of the date of the most recent status report, July
7 15, 2020, Westlands’ primary water service contracts had been converted into a repayment contract, as
8 had five other water service contracts held by Westlands and its sub-entities. (See Doc. No. 122 at 2.)

9 Meanwhile, on July 8, 2020, plaintiffs moved to amend their complaint to add claims pertaining
10 to the six new, *converted* repayment contracts. (Doc. No. 120.) That motion, which was unopposed,
11 was granted by the court. (Doc. No. 126.) Notably, the second amended complaint (“SAC”) did not
12 abandon plaintiff’s original claims against the 2016–18 Interim Contracts (the pre-conversion water
13 service contracts). Rather, plaintiffs merely added closely related NEPA challenges to the new contracts
14 along with other related claims. (See *generally* Doc. No. 120-1.)

15 In October 2020, Federal Defendants and Defendant-Intervenors filed motions to dismiss any
16 claims in the SAC premised on the 2016–18 Interim Contracts, arguing that those claims are now moot
17 because the challenged Interim Contracts no longer exist and that no exception to mootness applies
18 under the circumstances. (Doc. Nos. 130, 131.) The motions to dismiss, which were set for hearing in
19 mid-December 2020, became ripe for decision on December 8, 2020. (See Doc. Nos. 135, 138.)

20 In addition, several similar, albeit not *identical*, cases concerning contracts executed pursuant to
21 the WIIN Act were transferred to the undersigned. See *Ctr. for Biological Diversity v. U.S. Bureau of*
22 *Reclamation*, 1:20-cv-00706-DAD-EPG; *Hoopa Valley Tribe v. U.S. Bureau of Reclamation*, 1:20-cv-
23 01814-DAD-EPG. In light of the change of Presidential Administration, the parties to those cases have
24 agreed to stay those matters for a period of time while the new Administration analyzes its litigation
25 posture prior to proceeding in those matters. Similar stays have been requested and approved in other,
26 related matters, including *Pac. Coast Fed’n Fishermen’s Ass’ns v. Raimondo*, No. 1: 20-cv-00431-
27 DAD-EPG, and *California Nat. Res. Agency v. Raimondo*, No. 1:20-cv-00426-DAD-EPG.

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1 Here, however, plaintiffs have declined to agree to any such stay. As a result, on April 5, 2021,
2 Federal Defendants filed a motion to stay this case through May 12, 2021; that motion was set for
3 hearing on the earliest possible date, May 4, 2021. (Doc. No. 141.) Plaintiffs filed an opposition to the
4 motion on April 20, 2021 (pursuant to the normal briefing schedule set forth in Local Rule 230). (Doc.
5 No. 144.) Federal Defendants filed a reply the next day (April 21, 2021), pointing out that, as of that
6 date, only three weeks remained in the requested stay period. (Doc. No. 145.) As of the date of this
7 order, the requested stay expiration is less than two weeks away.

8 The court is cognizant of plaintiffs' strenuous opposition to any further delay in light of the fact
9 that this case has been pending for an extended period of time. (*See generally* Doc. No. 144.) In
10 particular, plaintiffs express obvious disagreement with the previously assigned district judge's
11 November 2019 decision to hold in abeyance the cross motions for summary judgment³ concerning the
12 lawfulness of the 2016–18 Interim Contracts. (*See* Doc. No. 110.) That decision was premised upon
13 record information indicating that “the issues to be adjudicated . . . will be rendered moot in the near
14 future,” coupled with the extreme limitations of this court's judicial resources. (*Id.* at 4.) As it turns out,
15 the anticipated WIIN Act conversions appear to have taken place, although the parties dispute whether
16 those events have indeed mooted plaintiffs' claims based upon the 2016–18 Interim Contracts.

17 Federal Defendants' stay request is premised in part on the unstated suggestion that its
18 position(s) regarding this and related cases may be evolving. At the same time, plaintiffs' objection to
19 any further delay is premised on *their* apparent conviction—which is well supported by the history of
20 this and related cases—that Reclamation is unlikely to entirely reverse course on its decades-old
21 approach to CVP contracting. Assuming the court were to adopt plaintiffs' position, the next step would
22 be for the court to rule on the pending motions to dismiss without further delay. In reality, however, the
23 court is simply not in a position to do so prior to May 12, 2021. As such, plaintiffs' objection to the
24 actual motion before the court (seeking a stay through May 12) will soon be rendered moot by the
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27 ³ The cross motions for summary judgment became ripe in November 2018. (*See* Doc. Nos. 96, 97.) As
28 noted, the court requested supplemental briefing in February 2019 (Doc. No. 99), and received
subsequent status reports indicating that the United States was moving toward a different form of
contract than was at issue in the FASC. (*See* Doc. Nos. 100, 102, 106, 109.)

1 passage of time. The court has examined the request for a brief stay under the operative standard drawn
2 from *Landis v. North American Co.*, 299 U.S. 248, 254 (1936). See *Elec. Frontier Found. v. Off. of Dir.*
3 *of Nat. Intel.*, No. C 08-01023 JSW, 2009 WL 773340, at *1 (N.D. Cal. Mar. 23, 2009) (applying *Landis*
4 factors to a stay request premised upon need for review of changed policies promulgated by new
5 administration). In determining whether to grant a stay, courts in the Ninth Circuit weigh the
6 “competing interests which will be affected by the granting or refusal to grant a stay,” including:

7 [1] the possible damage which may result from the granting of a stay, [2]
8 the hardship or inequity which a party may suffer in being required to go
9 forward, and [3] the orderly course of justice measured in terms of the
simplifying or complicating of issues, proof, and questions of law which
could be expected to result from a stay.

10 *Lockyer v Mirant*, 398 F.3d 1098, 1110 (9th Cir. 2005) (quoting *CMAX, Inc. v. Hall*, 300 F.2d 265, 268
11 (9th Cir. 1962)). Weighing these factors in light of the practical realities noted above, there is no
12 possibility of prejudice to plaintiffs if this case is stayed through May 12, 2021. At the same time, there
13 is a chance (albeit slight) that the brief pause will materially impact the scope of matters in dispute.
14 Accordingly, the request for a stay will be granted.


15 Nonetheless, the court will treat plaintiffs’ opposition as a pre-emptive argument against any
16 further delay. Indeed, plaintiffs appear to frame their opposition in this way, expressing concern that the
17 pending motion “is plainly an invitation for more delay” beyond May 12. (Doc. No 144 at 9.) Point
18 made. Federal Defendants are on notice that any further stay requests in this matter will be viewed with
19 skepticism absent, for example, a compelling showing that Federal Defendants are moving toward a
20 significant policy shift that will indeed change the landscape of this case.

21 CONCLUSION

22 For the reasons set forth above, Federal Defendants’ motion for a stay (Doc. No. 141) is
23 GRANTED. This case shall be stayed through May 12, 2021.

24 IT IS SO ORDERED.

25 Dated: April 29, 2021

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28 UNITED STATES DISTRICT JUDGE