## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

TRACY MAXXIZZINE JONES,

Petitioner,

No. CIV S-05-1067 GEB GGH P

VS.

GLORIA A. HENRY,

Respondent.

**FINDINGS & RECOMMENDATIONS** 

Petitioner, a state prisoner proceeding with appointed counsel filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Ninth Circuit issued an order on December 7, 2011, that affirmed and remanded this case and then denied a motion for rehearing on February 3, 2012. The Circuit remanded the case to the District Court to stay the case pending the outcome of an appeal in state court on similar issues.

The undersigned ordered a status report to be filed regarding the state court appeal that had itself been stayed pending the Ninth Circuit appeal. Petitioner indicates that respondent will not be filing a petition for writ of certiorari, but respondent had not yet replied to petitioner's request to lift the stay in state court. Nevertheless, the only logical course of action at this time is to reinvigorate the stayed state case on appeal, and the undersigned assumes that the parties will proceed with the appeal in state court. Accordingly, the undersigned recommends that the instant

case be stayed and the parties notify this court within 14 days of the state appeal being resolved.

According, IT IS HEREBY RECOMMENDED that this case be stayed and administratively closed pending the outcome of the state court appeal. The parties shall notify the court within 14 days of the state appeal being resolved.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections shall be served and filed within seven days after service of the objections. The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

DATED: March 12, 2012

/s/ Gregory G. Hollows
UNITED STATES MAGISTRATE JUDGE

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