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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SOUTH YUBA RIVER CITIZENS
LEAGUE and FRIENDS OF THE
RIVER,

NO. CIV. S-06-2845 LKK/JFM

Plaintiffs,

v.

O R D E R

NATIONAL MARINE FISHERIES
SERVICE, et al.,

Defendants.

_____ /

On September 2, 2008, the Court granted a stipulation to bifurcate the instant action into a liability phase and a remedy phase. (ECF No. 165). In this stipulation, the parties agreed "to withdraw pending discovery and refrain from serving further discovery and designating experts relating solely to remedies until such time as the Court may issue an order addressing any remedies phase of this case." (Id. at 2). The parties clarified, however, that preliminary injunctive relief may be sought during the

1 liability phase. (Id. at 1).

2 On July 8, 2010, the Court granted in part and denied in part
3 plaintiffs' and defendants' motions for summary judgment as to
4 liability. (ECF No. 316). The Court noted that, "[I]t is unclear
5 whether a preliminary injunction is necessary to avoid harms
6 pending litigation of a permanent remedy." (Id. at 74). The court
7 continued, to reason that:

8 The court is reluctant to distract the parties from
9 litigating final remedy by ordering further briefing on
10 this issue. Nonetheless, the court directs the parties
11 to submit supplemental briefing on whether, in light of
the passage of time, the particular injunction requested
by plaintiffs is necessary to avoid irreparable injury
pending adoption of a final remedy.

12 (Id.) Thus, the Court ordered supplemental briefing on whether
13 preliminary relief was necessary prior to litigation of a final
14 remedy.

15 Plaintiffs did not address the scope of the supplemental
16 briefing, and sought permanent relief in their supplemental
17 briefing. Specifically, plaintiffs contend that, "[T]he Court must
18 evaluate the harms from now until August 2011, the date when NMFS
19 issues a new biological opinion, plus six months to ensure the
20 Corps demonstrates a track record of compliance." (Plaintiffs'
21 Supplemental Reply Brief, ECF No. 325, at 10). Such is simply not
22 the case. The Court would only consider whether any relief is
23 necessary to prevent irreparable injury from occurring before
24 litigation of a final remedy is complete. Because of plaintiffs'
25 approach to the supplemental briefing, they provided no evidence
26 or even argument as to why the preliminary relief they seek must

1 be awarded to avoid irreparable injury from occurring within the
2 relevant time frame. Rather, they argue that irreparable injury may
3 occur before August 2011, a date derived from plaintiffs' proposed
4 "preliminary" injunction requiring NMFS to issue a new BiOp by
5 February 4, 2011. In so doing, plaintiffs are seeking that this
6 court award permanent relief in the form of a preliminary
7 injunction and to tether its grant of interim measures to the
8 premature award of permanent relief. The Court specifically
9 instructed plaintiffs to inform it of whether the particular
10 injunction requested by them is necessary to avoid irreparable
11 injury pending adoption of a final remedy. Plaintiffs did not meet
12 this burden. The federal defendants and the intervening defendants
13 highlighted this problem in their responsive briefs.¹ The Court,
14 therefore, denies plaintiffs' motion for a preliminary injunction
15 without prejudice.

16 Also in the July 8, 2010 order, the Court granted plaintiffs'
17 motion for summary judgment on their third Claim, finding that the
18 National Marine Fisheries Service ("NMFS") acted arbitrarily and
19 capriciously in reaching the Biological Opinion's ("BiOp") no-
20 jeopardy and no adverse modification conclusions, and in issuing
21 the incidental take statement ("ITS"). The Court also denied the
22 federal defendants' motion for summary judgment on plaintiffs'
23 Claim 4B, which alleges that the Army Corps of Engineers ("Corps")

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25 ¹ Additionally, the federal defendants proposed a briefing
26 schedule on remedy. After submitting this brief, the parties
engaged in settlement discussions, which make the proposed schedule
no longer applicable.

1 violated the terms and conditions of the ITS, on the grounds that
2 there is a disputed question of material fact as to this Claim. In
3 light of these findings, the Court ordered the parties to brief the
4 question of whether Claim 4B, if successful, would entitle
5 plaintiffs to any remedy beyond that available under Claim 3. The
6 parties agree that Claim 4B could not entitle plaintiffs to any
7 remedy beyond that available under Claim 3, and that trial on Claim
8 4B is not necessary at this time. Plaintiffs, however, are hesitant
9 to dismiss this Claim because they want to preserve their right to
10 try Claim 4B if the Court's decision on Claim 3 is reversed or
11 modified on appeal.

12 Under the doctrine of prudential mootness, district courts may
13 dismiss a claim where "not technically moot," but nonetheless where
14 "circumstances [have] changed since the beginning of litigation
15 that forestall any occasion for meaningful relief." Hunt v.
16 Imperial Merchant Servs., Inc., 560 F.3d 1137 (9th Cir. 2009)
17 (internal quotations omitted) (alluding to, but not adopting
18 doctrine of prudential mootness), see also Wallis v. Indymac
19 Federal Bank, ___ F. Supp. 2d ___, No. C09-5500-BHS, 2010 WL
20 2342530, at *3-5 (W.D. Wash. June 8, 2010) (providing overview of
21 doctrine of prudential mootness); Sierra Club v. Babbitt, 60 F.
22 Supp. 2d 1202, 1244 (E.D. Cal. 1999) (applying doctrine of
23 prudential mootness). Here, the Court has found liability for
24 defendants on Claim 3. The parties admit that Claim 4B, if
25 successful, will not provide for any further relief than Claim 3.
26 Accordingly, reaching the merits of Claim 4 will not potentially

1 serve to award plaintiffs meaningful relief. Thus, the court
2 dismisses Claim 4B without prejudice as prudentially moot.²

3 For the foregoing reasons, the court ORDERS as follows:

4 (1) Plaintiffs' motion for a preliminary injunction (ECF No.
5 260) is DENIED WITHOUT PREJUDICE.

6 (2) The hearing on plaintiffs' motion, set for November 22,
7 2010, is VACATED.

8 (3) Plaintiffs' Claim 4B is DISMISSED WITHOUT PREJUDICE as
9 prudentially moot.

10 (3) A status conference is SET for November 22, 2010 at 3:00
11 p.m. At this conference, the parties shall be prepared
12 to set a schedule for discovery necessary, if any, for
13 remedy and for briefing final remedy. All interested
14 parties shall submit status reports of no more than five
15 pages by Thursday, November 18, 2010 at 12:00 p.m.


16 IT IS SO ORDERED.

17 DATED: November 16, 2010.

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LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT

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25 ² This dismissal does not prevent plaintiffs from raising the
26 merits of Claim 4B on appeal or from moving the District Court for
relief from judgment upon reversal of its decision as to Claim 3.