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

DALE CRAPO,

Petitioner,

No. 2: 07-cv-2554 JAM KJN P

vs.

BEN CURRY,

Respondent.

ORDER

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On October 8, 2010, the undersigned recommended that petitioner’s application for a writ of habeas corpus be granted and that the California Board of Parole Hearings (“BPH”) be directed to set a parole date for petitioner within thirty days of the adoption of the findings and recommendations.

On October 28, 2010, respondent filed a motion for withdrawal of the findings and recommendations or, in the alternative, for an extension of time to file objections. Respondent states that the findings and recommendations should be withdrawn because on October 12, 2010 the Ninth Circuit decided Haggard v. Curry, No. 10-16819, 2010 WL 4015006 (9th Cir. Oct. 10, 2010). In Haggard, the Ninth Circuit held that if a district court determines that the BPH’s decision is not supported by “some evidence,” the correct remedy is not to order that the petitioner be released on parole, but rather to order the BPH to conduct another eligibility

1 hearing at which the prisoner's rights are respected.

2           Withdrawal of the findings and recommendations is not warranted. The parties  
3 may address Haggard v. Curry in their objections and/or reply briefing.

4           Accordingly, IT IS HEREBY ORDERED that:

5           1. Respondent's motion to withdraw the findings and recommendations (Dkt. No.  
6 17) is denied;

7           2. Respondent's objections to the finding and recommendations are due within  
8 twenty-eight days of the date of this order; petitioner may file a reply within fourteen days  
9 thereafter.

10 DATED: November 2, 2010

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14 KENDALL J. NEWMAN  
15 UNITED STATES MAGISTRATE JUDGE

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