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8   IN THE UNITED STATES DISTRICT COURT

9   FOR THE EASTERN DISTRICT OF CALIFORNIA

10   TOBY EVANS,

11   Petitioner,   No. CIV S-08-2859 FCD DAD P

12   vs.

13   D. K. SISTO, Warden,

14   Respondent.   FINDINGS & RECOMMENDATIONS

15   _____/

16   Petitioner is a state prisoner proceeding pro se with a petition for a writ of habeas

17   corpus pursuant to 28 U.S.C. § 2254. Therein, petitioner challenged a decision of the California

18   Board of Parole Hearings denying him parole. By order filed December 20, 2010, petitioner was

19   ordered to show cause, within thirty days, why this action should not be dismissed as moot. The

20   thirty day period has now expired, and petitioner has not shown cause or otherwise responded to

21   the court's order.

22   Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed

23   without prejudice. See Local Rule 110; Fed. R. Civ. P. 41(b).

24   These findings and recommendations will be submitted to the United States

25   District Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within

26   twenty-one days after being served with these findings and recommendations, any party may file

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1 written objections with the court. The document should be captioned "Objections to Findings

2 and Recommendations." Any reply to the objections shall be served and filed within fourteen

3 days after service of the objections. Failure to file objections within the specified time may

4 waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th

5 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991). In his objections petitioner may

6 address whether a certificate of appealability should issue in the event he files an appeal of the

7 judgment in this case. See Rule 11, Federal Rules Governing Section 2254 Cases (the district

8 court must issue or deny a certificate of appealability when it enters a final order adverse to the

9 applicant).

10 DATED: February 1, 2011.

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    DALE A. DROZD

13 UNITED STATES MAGISTRATE JUDGE

14 DAD:8
    evans2859.dism

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