

1 since "Section 1292(b) is a departure from the normal rule that
2 only final judgments are appealable . . . [it] therefore must be
3 construed narrowly[,]" James v. Price Stern Sloan, Inc., 283 F.3d
4 1064, 1068 n.6 (9th Cir. 2002), and shall "be used only in
5 exceptional situations in which allowing an interlocutory appeal
6 would avoid protracted and expensive litigation." In re Cement
7 Antitrust Litig., 673 F.2d at 1026 (citations omitted). "The
8 party seeking review [has] the burden of showing that
9 'exceptional circumstances justify a departure from the basic
10 policy of postponing appellate review until after the entry of a
11 final judgment.'" Ass'n of Irrigated Residents v. Fred Schakel
12 Dairy, 634 F. Supp. 2d 1081, 1087 (E.D. Cal. 2008) (quoting
13 Coopers & Lybrand v. Livesay, 437 U.S. 463, 475 (1978)).

14 **II. MATERIALLY ADVANCE**

15 Defendants argue the questions they seek to have
16 certified would materially advance the termination of the
17 litigation, contending that "[a] successful appeal would resolve
18 the remaining portion of the first and fifth causes of action,
19 [thereby] eliminating the need to present evidence at trial o[n]
20 the 62 [storm water discharge] samples taken by Plaintiff." (Mot.
21 9:5-9.) They further argue "this Court's ruling as to the 65
22 storm water [discharge] samples taken by Defendants and the
23 samples taken on December 11, 2014, premised on the applicability
24 of the CTR standards to these storm water discharges, would be
25 reversed," and the reversal would obviate the need "to hear
26 evidence on the amount of penalties to be assessed against
27 Defendants for these 65 sample exceedances."¹ (Mot. 9:15-17.)

28 ¹ These numbers have been reconsidered per the Court's Order Granting

1 Plaintiff counters: "The storm water sample results are
2 pertinent to all of Plaintiff's causes of action that will be
3 tried in February."² (Pl.'s Opp'n to Mot. ("Opp'n") 3:5-6, ECF
4 No. 240.) Plaintiff further counters: "[R]egardless of a reversal
5 on CTR, Plaintiff will need to put on evidence regarding the
6 storm water samples taken by third-parties, as these sample
7 results support Plaintiff's other causes of action for additional
8 violation of the [General] Permit[,]. . . the [federal Clean
9 Water] Act[,]. and Proposition 65." (Opp'n 3:12-15 (emphasis
10 added).) Plaintiff also rejoins that in the penalty phase of this
11 action, "Plaintiff will not present separate evidence to support
12 penalties in relation to the 65 storm water sample results taken
13 by third-parties." (Opp'n 3:23-24.)

14 Defendants have not shown that an immediate appeal from
15 the Order "may materially advance the ultimate termination of the
16 litigation." 28 U.S.C. § 1292(b). Defendants' certification
17 "[m]otion comes after [multiple] years of extensive discovery and
18 dispositive motion practice and immediately before final
19 resolution of this matter at trial," Cmty. Ass'n for Restoration
20 of the Env't, Inc. v. Cow Palace, LLC, No. 2:13-CV-3016-TOR, 2015
21 WL 403178, at *2 (E.D. Wash. Jan. 28, 2015); trial is scheduled
22 to begin in early 2016. At this late stage in the action,
23 "allowing an interlocutory appeal would [not] avoid protracted
24 and expensive litigation." In re Cement Antitrust Litig., 673
25 F.2d at 1026 (citations omitted).

26
27 Defendants' Motion for Partial Reconsideration.

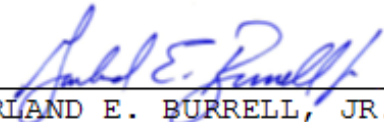
28 ² A Minute Order issued on January 4, 2016, reschedules the trial to
commence at 9:00 AM on April 19, 2016. (ECF No. 249.)

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III. CONCLUSION

For the stated reasons, Defendants' motion is denied.

Dated: January 4, 2016



GARLAND E. BURRELL, JR.
Senior United States District Judge