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

WILLIAM ALEXANDER BOYD,

Petitioner,

No. 2: 12-cv-0372 JAM GGH P

vs.

W. KNIPP, Warden,

Respondent.

ORDER

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Petitioner, a state prisoner proceeding pro se, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. By Findings and Recommendations, filed on July 31, 2012, this court recommended petitioner’s motion for a stay be granted, pursuant to Rhines,<sup>1</sup> pending exhaustion of petitioner’s unexhausted claims which petitioner had indicated in his motion were then pending before the state Supreme Court. The court also recommended respondent’s motion to dismiss as barred by the statute of limitations be vacated without prejudice. However, shortly thereafter, on August 10, 2012, while the findings and recommendations were still pending, petitioner filed a notice of state court exhaustion of the previously unexhausted claims, including a copy of a May 16, 2012, state Supreme Court denial of the petition with citations to In re Robbins, 18 Cal.4th 770, 780 (1998), and In re Clark, 5

<sup>1</sup> Rhines v. Weber, 544 U.S. 269, 125 S.Ct. 1528 (1995).

1 Cal.4th 750, 767-769. It is unclear why petitioner could not have filed this notice earlier and  
2 sought to withdraw his motion for a stay.

3           Nevertheless, in light of this updated information, the court will vacate its  
4 findings and recommendations and set the briefing schedule for this matter as petitioner indicates  
5 all of his claims in the original petition have been exhausted. Petitioner perceives no need for an  
6 amended petition and seeks only to proceed on the claims of his original petition. As respondent  
7 filed the motion to dismiss at a time when only an opposition to the stay motion was due and  
8 prior to the denial of petitioner's state court petition containing the unexhausted claims, the court  
9 will now vacate by order both petitioner's motion to stay as moot and petitioner's motion to  
10 dismiss without prejudice as premature.

11           In accordance with the above, IT IS HEREBY ORDERED that:

12           1. The Findings and Recommendations, filed on July 31, 2012 (docket # 21), are  
13 hereby VACATED;

14           2. Petitioner's motion for a stay and abeyance, filed on February 14, 2012 (docket  
15 # 3), is VACATED from the court's calendar as moot;

16           3. Respondent's motion to dismiss as barred by the statute of limitations, filed on  
17 March 30, 2012 (docket # 13), is VACATED without prejudice as premature;

18           4. Respondent is directed to file a response to petitioner's habeas petition within  
19 sixty days from the date of this order. See Rule 4, 28 U.S.C. foll. § 2254. An answer shall be  
20 accompanied by all transcripts and other documents relevant to the issues presented in the  
21 petition. See Rule 5, 28 U.S.C. foll. § 2254;

22           5. If the response to the habeas petition is an answer, petitioner's reply, if any,  
23 shall be filed and served within thirty days after service of the answer;

24           6. If the response to the habeas petition is a motion, petitioner's opposition or  
25 statement of non-opposition to the motion shall be filed and served within thirty days after  
26 service of the motion, and respondent's reply, if any, shall be filed and served within fourteen

1 days thereafter; and

2                   7. In addition to serving a copy of this order, the Clerk of the Court shall also  
3 serve upon respondent's counsel the form Consent to Proceed Before a United States Magistrate  
4 Judge.

5 DATED: August 19, 2012

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7                                   /s/ Gregory G. Hollows  
8                                   UNITED STATES MAGISTRATE JUDGE

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