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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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RUSTY COAL BLACKWATER and TRENT
LANE BLACKWATER,

Plaintiffs,

v.

THE SECRETARY OF THE DEPARTMENT
OF THE INTERIOR, through its Acting
Assistant Secretary, BUREAU OF INDIAN
AFFAIRS, its officers, servants, agents,
employees, representatives, and attorneys,

Defendants.

Case No. 3:14-cv-00244-LRH-VPC
ORDER

Rusty Coal Blackwater and Trent Lane Blackwater bring two motions before the court. The plaintiffs first move the court for an order compelling the Secretary of the Interior and the Bureau of Indian Affairs (“BIA”) to enter into a stipulation and an order remanding to the BIA with instructions to place the plaintiffs onto the Western Shoshone judgment roll. ECF No. 18. The defendants responded but no reply was filed. ECF No. 19. The plaintiffs also move the court for an order of final judgment that approves the BIA’s subsequent actions, prevents the disenrollment of the plaintiffs from the Western Shoshone judgment roll, and compels the payment of funds to the plaintiffs. ECF No. 25. The defendants opposed the motion, and the plaintiffs replied. ECF Nos. 26, 27. The court now denies both motions, finding the case is moot.

I. BACKGROUND

The Western Shoshone Claims Distribution Act was passed in 2004. Pub L. 108-270, 118 Stat. 805. To make a claim for recovery under the Act, a person must be placed on the Western

1 Shoshone judgment roll. Id. To be placed on the judgment roll, the person must be at least ¼
2 blood quantum level of Western Shoshone. Id.

3 The plaintiffs applied to be placed on the judgment roll based on their heritage.¹ ECF No.
4 25. Their grandfather was Clinton Albert Williams, who was ½ blood quantum level of Western
5 Shoshone. Id. Their grandmother was Betty Ann Thomas Williams, who was also ½ blood
6 quantum level of Western Shoshone. Id. The BIA accepted the plaintiffs’ applications and paid
7 each plaintiff part of the sum owed. Id.

8 But the BIA later revoked the acceptance of the plaintiffs’ applications and then rejected
9 the applications, stating Betty Davis—rather than Betty Ann Thomas Williams—was the
10 plaintiffs’ grandmother and was not ½ blood quantum level of Western Shoshone. Id. The
11 plaintiffs disputed the claim and provided documentation to show Betty Ann Thomas Williams
12 was their grandmother. Id. The BIA still declined to reinstate the plaintiffs to the judgment roll.
13 Id. Therefore, the “clerical error” that named Betty Davis as the plaintiffs’ grandma prevented
14 the plaintiffs from recovering under the Act. Id.; see also ECF Nos. 18, 25, 27 (plaintiffs
15 describing the misnaming of Betty Ann Thomas Williams as a “clerical error”).

16 The plaintiffs sued the defendants, alleging violations of due process, of equal protection,
17 and of the Administrative Procedure Act. ECF No. 1. On the defendants’ motion, the case was
18 voluntarily remanded to the BIA. ECF No. 17. The BIA reconsidered the plaintiffs’ applications
19 and ultimately notified the plaintiffs in June 2016 that they were in fact eligible for placement on
20 the judgment roll. ECF Nos. 25, 26.

21 But a year passed without the plaintiffs being placed on the judgment roll. See *id.* As a
22 result, in October 2017, the plaintiffs moved the court for an order that compels the defendants to
23 stipulate to placing the plaintiffs onto the judgment roll and an order directing the defendants to
24 do so. ECF Nos. 18. The day after the plaintiffs moved for the order to compel the defendants
25 into a stipulation, the plaintiffs were added to the judgment roll. ECF No. 19, 25–27.

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28 ¹ The defendants do not dispute the facts in the plaintiffs’ motion. See ECF Nos. 19, 26. The court therefore takes the facts from the plaintiffs’ pending motions unless otherwise noted.

1 The plaintiffs did not receive the remaining funds owed to them as of November 29,
2 2017. ECF No. 25. The plaintiffs therefore moved for an order of final judgment. *Id.* The
3 defendants opposed the motion. ECF No. 26.

4 **II. LEGAL STANDARD**

5 A case no longer presents a case or controversy for Article III purposes and is therefore
6 moot “when the issues presented are no longer live or the parties lack a legally cognizable
7 interest in the outcome.” *Rosebrock v. Mathis*, 745 F.3d 963, 971 (9th Cir. 2014) (quoting
8 *Already, LLC v. Nike, Inc.*, 586 U.S. 85, 91 (2013) (internal quotation marks omitted)). But
9 courts hesitate to declare a case moot when a party has voluntarily ceased the challenged activity.
10 *Am. Cargo Transp., Inc. v. United States*, 625 F.3d 1176, 1179 (9th Cir. 2010). Courts hesitate to
11 dismiss a case as moot based on a party’s voluntary cessation of the challenged activity because
12 a dismissal for mootness would allow the party to resume the challenged activity after the case
13 was dismissed. *Rosebrock*, 745 F.3d at 971.

14 While the doctrine of mootness ordinarily considers the possibility of a party voluntarily
15 ceasing the challenged activity in bad faith, the court must “presume the government is acting in
16 good faith” if it is the party that voluntarily ceases the challenged activity. *Am. Cargo Transp.*,
17 625 F.3d at 1180. But the government still “bears the heavy burden of showing that the
18 challenged conduct cannot reasonably be expected to start up again.” *Rosebrock*, 745 F.3d at
19 971.

20 “[A] policy change not reflected in statutory changes or even in changes in ordinances or
21 regulations will not necessarily render a case moot ... but it may do so in certain
22 circumstances....” *Id.* (internal citations omitted). While a definitive test to determine mootness
23 under circumstances involving voluntary cessation does not yet exist, five factors make mootness
24 more likely: “(1) the policy change is evidenced by language that is broad in scope and
25 unequivocal in tone; (2) the policy change fully addresses all of the objectionable measures that
26 the government officials took against the plaintiffs in the case; (3) the case in question was the
27 catalyst for the agency’s adoption of the new policy; (4) the policy has been in place for a long
28 time when [the court] consider[s] mootness; and (5) since the policy’s implementation[,] the

1 agency's officials have not engaged in conduct similar to that challenged by the plaintiff." Id. at
2 972 (internal citations and punctuation marks omitted). Conversely, mootness is not likely when
3 "the new policy could be easily abandoned or altered in the future." Id. (internal citations and
4 punctuation marks omitted).

5 **III. DISCUSSION**

6 The plaintiffs bring two motions before the court. ECF Nos. 18, 25. The court first
7 resolves the motion for an order compelling the defendants to enter into stipulation. The court
8 then resolves the motion for a final judgment.

9 **A. Motion for an Order Compelling a Stipulation**

10 The plaintiffs first move for an order to compel the defendants to enter into a stipulation
11 and to instruct the defendants to reinstate the plaintiffs to the judgment roll. But since filing their
12 motion, the plaintiffs were added to the judgment roll. The court therefore denies this motion as
13 moot.

14 **B. Motion for a Final Judgment**

15 The court now turns to the plaintiffs' motion for a final judgment. In their motion, the
16 plaintiffs request an order that (1) approves the BIA's decision to reinstate the plaintiffs to the
17 judgment roll, (2) prohibits the BIA from disenrolling the plaintiffs from the judgment roll, and
18 (3) compels the defendants to disburse the remaining owed funds to the plaintiffs. The
19 defendants argue that the case became moot once the plaintiffs were reinstated to the judgment
20 roll.² The court agrees with the defendants.

21 The case became moot when the issue presented by the plaintiffs was no longer live. The
22 plaintiffs sued the defendants to reinstate their rights under the Act. Their rights were reinstated
23 once they were added onto the judgment roll. The case therefore became moot once the plaintiffs
24 were added to the judgment roll and regained their rights under the Act.

25 The court does not sway in its decision even though its finding results from the
26 defendants voluntarily ceasing the challenged conduct, because the five considerations

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28 ² The defendants also argue that the plaintiffs lack the authority to move for an order granting the plaintiffs' requested relief, e.g., a rule or statute. But the court will not address the argument based on the finding of mootness.

1 suggesting a finding of mootness favor the court’s decision. On remand, the BIA completely
2 reversed its finding that the plaintiffs were ineligible for placement on the judgment roll; the
3 change addresses the plaintiffs’ objections to the BIA’s original finding of ineligibility; the BIA
4 changed its decision in response to the initiation of this case; the BIA changed its decision nearly
5 two years ago; and the plaintiffs do not provide any allegations that suggest the BIA has
6 attempted to revoke the plaintiffs’ eligibility since the change in the BIA’s decision. Further, the
7 challenge activity resulted from a “clerical error,” which has now been resolved. Because the
8 court presumes that the BIA changed its decision in good faith and finds little reason to doubt the
9 BIA’s change in its decision³, the court holds that the defendants have met their burden of
10 demonstrating mootness. The court therefore dismisses the case as moot.

11 **IV. CONCLUSION**


12 IT IS THEREFORE ORDERED that Rusty Coal Blackwater and Trent Lane
13 Blackwater’s motion for an order compelling the defendants to enter into stipulation and order
14 remanding to agency (ECF No. 18) is **DENIED as moot**.

15 IT IS FURTHER ORDERED that Rusty Coal Blackwater and Trent Lane Blackwater’s
16 motion for a final judgment (ECF No. 25) is **DENIED**.

17 IT IS FURTHER ORDERED that the case be **DISMISSED as moot**.

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19 IT IS SO ORDERED.

20 DATED this 8th day of February, 2018.

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23 LARRY R. HICKS
24 UNITED STATES DISTRICT JUDGE

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26 ³ The court acknowledges that the parties dispute whether the payment information has been received by the
27 plaintiffs. See ECF Nos. 26, 27. But the court does not believe the two-month old dispute suggests the BIA will
28 revoke the acceptance of the plaintiffs’ applications again. However, if the BIA does revoke its current decision, the
plaintiffs may pursue relief in a new suit. See Rosebrock, 745 F.3d at 974 (recognizing the lack of procedural
safeguards that would prevent the challenged activity from resuming but stating the plaintiffs’ right to pursue relief
in a new suit if the activity were to resume).