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9  
 10 IN THE UNITED STATES DISTRICT COURT  
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 12 SAN FRANCISCO DIVISION

13  
 14 ALASKA COMMUNITY ACTION ON  
 TOXICS, et al.,

15  
 16 Plaintiffs,

17 v.

18 COUNCIL ON ENVIRONMENTAL  
 19 QUALITY, and MARY NEUMAYR, in  
 her official capacity as Chair of the  
 20 council on Environmental Quality,

21 Defendants.  
 22

Case No. 3:20-cv-05199-RS

**JOINT STATUS REPORT AND  
 STIPULATION TO EXTEND STAY OF  
 CASE BY 45 DAYS**

23  
 24 Pursuant to this Court’s February 12, 2021 Order Staying Case for 60 Days (ECF No.  
 25 49), the Parties hereby submit this joint status report. The Parties to the related case before  
 26 this Court, *California v. CEQ*, No. 3:20-cv-06057-RS (N.D. Cal.), are submitting a similar  
 27 joint status report in that case.

28 Federal Defendants and Plaintiffs have conferred regarding future proceedings in this

1 case and hereby stipulate to an extension of the stay by an additional 45 days, until May 28,  
2 2021. Counsel for Federal Defendants has conferred with Intervenor-Defendants who advise  
3 that they agree to the requested 45-day extension of the stay.

4 In support of the joint status report and stipulation, Federal Defendants and Plaintiffs  
5 state the following:

6 1. Plaintiffs challenge the Council on Environmental Quality’s (“CEQ”) July 16,  
7 2020 rulemaking entitled Update to the Regulations Implementing the Procedural Provisions  
8 of the National Environmental Policy Act, 85 Fed. Reg. 43,304 (July 16, 2020) (“2020 Rule”).

9 2. On inauguration day, President Biden issued Executive Order 13990 directing  
10 federal agencies to “immediately review and, as appropriate and consistent with applicable  
11 law, take action to address the promulgation of Federal regulations and other actions during  
12 the last 4 years that conflict” with “important national objectives,” such as “listen[ing] to the  
13 science”; “improv[ing] public health and protect[ing] our environment”; “reduc[ing]  
14 greenhouse gas emissions”; and “prioritiz[ing] . . . environmental justice.” 86 Fed. Reg.  
15 7,037, 7,037 (Jan. 25, 2021). The order also requires agencies “to immediately commence  
16 work to confront the climate crisis.” *Id.* The White House specifically identified the 2020  
17 Rule as subject to these requirements.<sup>1</sup>

18 3. In light of Executive Order 13990 and CEQ’s review of the 2020 Rule, on  
19 February 11, 2021 the Parties stipulated to a 60-day stay of this case and the related *California*  
20 case. ECF No. 48. The Court stayed the cases the following day, until April 13, 2021. ECF  
21 No. 49. The Court set a status conference for April 15, 2021, and ordered the Parties to file a  
22 status report one week before the status conference, on April 8, 2021. *Id.*

23 4. Since then, CEQ has begun reconsidering the 2020 Rule pursuant to Executive  
24 Order 13990 and, as part of that process, is considering whether to propose to amend or repeal  
25 the Rule in whole or in part.

26  
27  
28 <sup>1</sup> Fact Sheet: List of Agency Actions for Review, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/>.

1           5.       Although CEQ has begun its reconsideration process, CEQ does not yet have a  
2 confirmed Chair. CEQ is hopeful that Congress may confirm a new Chair within a few  
3 weeks. Once the new Chair has been confirmed and has an opportunity to confer with CEQ's  
4 staff, CEQ will be in a better position to discuss next steps both with regard to its  
5 reconsideration of the 2020 Rule and this litigation.

6           6.       Federal Defendants and Plaintiffs therefore stipulate to a 45-day extension of  
7 the stay to allow time for the new Chair to be confirmed and for the agency, with its new  
8 Chair in place, to determine next steps with regard to the 2020 Rule and the litigation  
9 challenging it.

10          7.       The stipulated stay is consistent with the Court's broad discretion to stay  
11 proceedings and defer judicial review. *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)  
12 (“[T]he power to stay proceedings is incidental to the power inherent in every court to control  
13 the disposition of the causes on its docket with economy of time and effort for itself, for  
14 counsel, and for litigants.”). It is also consistent with CEQ's inherent authority to reconsider  
15 and to revise, replace, or repeal a prior decision to the extent permitted by law and supported  
16 by a reasoned explanation. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515  
17 (2009); *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 42  
18 (1983).

19          8.       An extension of the stay is also in the interest of judicial economy. Allowing  
20 CEQ sufficient time to determine its own path forward through the administrative process may  
21 narrow, or potentially even eliminate, some or all of the issues before this Court.

22          9.       Federal Defendants and Plaintiffs agree to meet to discuss possible paths  
23 forward in this litigation before the close of the 45-day extension period.

24          10.       Federal Defendants and Plaintiffs propose that the Parties file a further joint  
25 status report at the end of the 45-day extension period, on or before May 26, 2021, regarding  
26 future proceedings in this case. They also propose that the Court set the deadline for Federal  
27 Defendants' reply in support of their motion to dismiss for June 11, 2021. In the event that the  
28 Parties are unable to determine an alternative path forward, they will proceed with briefing on

1 the motion to dismiss.

2 For the foregoing reasons, Federal Defendants and Plaintiffs stipulate to a 45-day  
3 extension of the stay of this case. Federal Defendants and Plaintiffs respectfully request the  
4 Court enter an order staying the case for an additional 45 days until May 28, 2021, requiring the  
5 Parties to submit a further status report on or before May 26, 2021, and setting the deadline for  
6 Federal Defendants' reply in support of their motion for dismiss for June 11, 2021.

7 A proposed order is submitted herewith.

8 Respectfully submitted this 8th day of April, 2021.

9  
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\* In compliance with Local Rule 5-1(i)(3), the filer of this document attests that all signatories listed have concurred in the filing of this document.