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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 STATE OF CALIFORNIA, et al.,

15 Plaintiffs,

16 v.

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

21 Defendants.
22

Case No. 3:20-cv-6057-RS

**JOINT STIPULATION TO STAY CASE
FOR 60 DAYS**

23 Pursuant to Local Rules 7-12 and 16-2(e), Federal Defendants and Plaintiffs stipulate
24 to a stay of this case for 60 days. Federal Defendants and Plaintiffs also stipulate to a 60-day
25 stay of the related case before this Court, *Alaska Community Action on Toxics v. CEQ*, No.
26 3:20-cv-05199-RS (N.D. Cal.), and are simultaneously filing a stipulation in that case.
27 Counsel for Federal Defendants has conferred with Intervenor-Defendants who advise that
28 they take no position on the 60-day stay.

1 In support of the joint stipulation, Federal Defendants and Plaintiffs set forth the
2 following reasons:

3 1. Plaintiffs challenge the Council on Environmental Quality's ("CEQ") July 16,
4 2020 rulemaking entitled Update to the Regulations Implementing the Procedural Provisions of
5 the National Environmental Policy Act, 85 Fed. Reg. 43,304 (July 16, 2020) ("2020 Rule").

6 2. The 2020 Rule has been identified by the White House as an agency action that
7 will be reviewed "in accordance with the Executive Order: 'Protecting Public Health and the
8 Environment and Restoring Science to Tackle the Climate Crisis.'"¹

9 3. Agencies have inherent authority to review past decisions and to revise, replace or
10 repeal a decision to the extent permitted by law and supported by a reasoned explanation. *FCC*
11 *v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); *Motor Vehicle Mfrs. Ass'n v. State*
12 *Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 42 (1983). An agency's interpretation of a statute it
13 administers is not "carved in stone" but must be evaluated "on a continuing basis," for example,
14 "in response to . . . a change in administrations." *Nat'l Cable & Telecomm. Ass'n v. Brand X*
15 *Internet Servs.*, 545 U.S. 967, 981 (2005) (internal quotation marks and citations omitted).

16 4. Federal Defendants and Plaintiffs stipulate to a 60-day stay to allow CEQ time to
17 review the 2020 Rule and determine how to proceed with regard to the rule and the pending
18 litigation challenging it. There are currently five cases in four federal district courts challenging
19 the 2020 Rule, including the two cases before this Court. *Wild Va. v. CEQ*, No. 3:20-cv-00045-
20 JPJ-PMS (W.D. Va.); *Alaska Cmty. Action on Toxics v. CEQ*, No. 3:20-cv-05199-RS (N.D.
21 Cal.); *California v. CEQ*, No. 3:20-cv-06057-RS (N.D. Cal.); *Env't Just. Health All. v. CEQ*, No.
22 1:20-cv-06143-CM (S.D.N.Y.); *Iowa Citizens for Cmty. Improvement v. CEQ*, No. 1:20-cv-
23 02715-TJK (D.D.C.).

27 ¹ Fact Sheet: List of Agency Actions for Review, [https://www.whitehouse.gov/briefing-](https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/)
28 [room/statements-releases/2021/01/20/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/); see also
Executive Order 13990, 86 Fed. Reg. 7037 (Jan. 25, 2021).

1 5. CEQ also requires additional time to review the 2020 Rule because the agency is
2 still in the process of onboarding new officials and is awaiting confirmation and appointment of
3 a new Chair.

4 6. The stipulated stay is consistent with the Court's broad discretion to stay
5 proceedings and defer judicial review. *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (“[T]he
6 power to stay proceedings is incidental to the power inherent in every court to control the
7 disposition of the causes on its docket with economy of time and effort for itself, for counsel, and
8 for litigants.”).

9 7. Accordingly, Federal Defendants and Plaintiffs respectfully request that the Court
10 enter an order staying this case for a period of 60 days and vacating the current deadlines.
11 Currently, Federal Defendants' reply in support of its motion to dismiss is due February 15, 2021
12 and a hearing on that motion has been noticed for February 25, 2021. ECF Nos. 72, 76. In
13 addition, the Court has set a case management conference for March 18, 2021. ECF No. 78.

14 8. Federal Defendants and Plaintiffs propose that the Court schedule a status
15 conference at the end of the 60-day stay period to discuss future proceedings in this case, and
16 require the parties to file a joint status report 7 days before the status conference.

17 9. The stipulated stay will conserve the resources of the Court and the parties and is
18 in the interests of judicial economy. Federal Defendants will be in a better position to discuss
19 next steps in this case once CEQ is fully-staffed and has had an opportunity to complete its
20 review of the 2020 Rule.

21 For the foregoing reasons, Federal Defendants and Plaintiffs stipulate to a 60-day stay of
22 this case and respectfully request the Court enter an order staying the case for 60 days and
23 vacating the existing deadlines. Federal Defendants and Plaintiffs also propose that the Court
24 schedule a status conference at the end of the 60-day stay (e.g., April 15, 2021) and require the
25 parties to file a joint status report regarding future proceedings 7 days prior to that conference.

26 A proposed order is submitted herewith.

27 Respectfully submitted this 11th day of February, 2021.

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