

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SIERRA CLUB, et al.,
Plaintiffs-Appellees,

v.

DONALD J. TRUMP, in his official capacity,
et al.,
Defendants-Appellants.

No. 19-16102

UNOPPOSED MOTION TO HOLD BRIEFING IN ABEYANCE

Defendants-appellants respectfully request that this Court hold briefing in abeyance in this preliminary injunction appeal, to avoid duplicative and unnecessary efforts in light of developments in district court that are likely to lead to entry of judgment very shortly. Plaintiffs do not oppose this motion.

This appeal concerns the district court's preliminary injunction of two projects in an order issued on May 24, 2019. The government appealed that injunction and has sought a stay pending appeal. That stay motion remains pending and is unaffected by this motion because the preliminary injunction remains in effect.

Meanwhile, the district court has directed the parties to submit summary judgment briefing on the remaining issues pertaining to the same claims by these plaintiffs and the plaintiff States in a related case challenging the same government actions and raising similar issues. ECF No. 165 (Minute Entry June 5, 2019); ECF

No. 167 (Scheduling Order June 7, 2019). That summary judgment briefing addresses the issues presented in the current preliminary injunction, as well as similar legal issues concerning other government projects. The summary judgment motions will be fully briefed in district court today, June 24, 2019. Because the government has represented to the district court that construction of the other projects at issue would begin no sooner than July 1, 2019, the parties expect that the district court will rule on the summary judgment motions before that date, and likely by Friday, June 28, 2019.

This Court's scheduling order set a deadline of Wednesday, June 26, 2019, for the government's opening brief, and contemplated that briefing of the preliminary injunction appeal would be complete by August 14, 2019. However, subsequent developments in district court demonstrate that it will not be possible to complete briefing on the preliminary injunction appeal before the district court enters judgment on the same claims. Indeed, the district court is likely to enter judgment within a few days after the government's opening brief is currently due.

An appeal from a broader judgment would supersede the current appeal, which concerns an interlocutory order addressing a subset of the issues pending before the district court. *See, e.g., In re Estate of Ferdinand Marcos Human Rights Litig.*, 94 F.3d 539, 544 (9th Cir. 1996) (citing cases). Because the district court is expected to enter judgment before the parties can complete briefing of this appeal,

the issues presented in this case will need to be addressed in any appeal from that judgment. The parties are engaged in discussions in an effort to propose an expedited briefing schedule in any appeal after the district court enters the expected judgment. We anticipate presenting such a proposal to this Court no later than Tuesday, July 8, 2019.

Dror Ladin, counsel for plaintiffs-appellees, has authorized us to represent that they do not oppose the requested relief.

CONCLUSION

For the foregoing reasons, the government respectfully requests that this Court hold briefing in abeyance pending further developments in district court. The parties will propose a briefing schedule no later than Tuesday, July 8, 2019.

Respectfully submitted,

/s/ H. Thomas Byron III
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JUNE 2019

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing motion complies with the requirements of FRAP 27(d) The motion was prepared in Times New Roman 14-point font, and contains 538 words, as counted by Microsoft Word 2016.

s/ H. Thomas Byron III
H. Thomas Byron III