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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

STATE OF CALIFORNIA, by and through
XAVIER BECERRA, ATTORNEY
GENERAL; and STATE OF NEW MEXICO,
by and through HECTOR BALDERAS,
ATTORNEY GENERAL,

Plaintiffs,

vs.

UNITED STATES DEPARTMENT OF THE
INTERIOR; OFFICE OF NATURAL
RESOURCES REVENUE; DAVID
BERNHARD, Acting Secretary of the
Interior; and GREGORY GOULD, Director,
Office of Natural Resources Revenue,

Defendants.

Case No: C 17-5948 SBA

**ORDER ACCEPTING REPORT
AND RECOMMENDATION OF
MAGISTRATE JUDGE HIXSON**

Dkt. 74, 91

Plaintiffs State of California and the State of New Mexico (collectively “Plaintiffs”) filed the instant action under the Administrative Procedures Act (“APA”), 5 U.S.C. § 706, against the Department of the Interior (“DOI”), the Office of Natural Resources Revenue (“ONRR”) and related parties (collectively “Federal Defendants”).¹ The Complaint challenged the ONRR’s repeal of the “Valuation Rule”—a set of regulations that govern the payment of royalties on oil, gas and coal extracted pursuant to leases of federal and Indian lands. The Court ruled that the ONRR’s repeal of the Valuation Rule violated the APA and thus vacated the repeal, thereby reinstating the Valuation Rule.

¹ There are two sets of intervenors: (1) Natural Resources Defense Council, Northern Plains Resource Council, The Wilderness Society and Western Organization of Resource Councils (collectively, “Conservation Intervenors”); and (2) National Mining Association, Wyoming Mining Association and American Petroleum Institute (collectively, “Industry Intervenors”). The Conservation Intervenors and Industry Intervenors are aligned with Plaintiffs and Federal Defendants, respectively.

1 Conservation Intervenors filed a Motion to Enforce Judgment, which the Court
2 referred to Magistrate Judge Thomas Hixson (“Judge Hixson”). Judge Hixson
3 subsequently issued a Report and Recommendation (“Recommendation”) in which he
4 recommends denying the motion. Conservation Intervenors object to the Recommendation,
5 and now, joined by Plaintiffs, have filed the instant Motion for De Novo Determination of
6 the Report and Recommendation. The motion requests that the Court reject the
7 Recommendation and instead grant the Motion to Enforce Judgment. Having read and
8 considered the papers submitted on this matter, and being fully informed, the Court
9 GRANTS the motion for de novo review, OVERRULES the objections to the
10 Recommendation, ACCEPTS the Recommendation and DENIES the Motion to Enforce
11 Judgment.²

12 **I. BACKGROUND**

13 **A. FACTUAL SUMMARY**³

14 The federal government leases vast tracts of public and Indian lands to private
15 companies for the exploration, development, and production of fossil-fuels for profit.
16 Under the Mineral Leasing Act of 1920 (“MLA”), 30 U.S.C. § 181 et seq., the government
17 is entitled to collect royalties from those leases based on the “value of the production
18 removed or sold from the lease.” 30 U.S.C. § 206(b)(1)(A) (oil and gas); 30 U.S.C.A.
19 § 207(a) (coal). The DOI is responsible for administering the MLA, while the ONRR is the
20 agency within the DOI responsible for collecting royalties from lessees.

21 On July 1, 2016, following a five-year rulemaking process, the ONRR finalized the
22 Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform rule (i.e.,
23 “Valuation Rule” or “2016 Valuation Rule”), which revamped the manner in which the
24 royalties for oil, gas and coal are calculated. 81 Fed. Reg. 43,338, 43,338. The Valuation
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26 ² The Court, in its discretion, resolves the instant motion without oral argument. See
27 Civ. L.R. 7-1(b).

28 ³ The parties are familiar with the facts of this case, which are summarized briefly to
provide context for the analysis set forth below.

1 Rule responded to concerns that royalties were being undervalued. The ONRR estimated
2 that the Valuation Rule would increase royalties by between \$71.9 and \$84.9 million
3 annually. Id. at 43,359.

4 The Valuation Rule had an effective date of January 1, 2017. Id. at 43,338.
5 However, before the Valuation Rule could take effect, several energy industry groups
6 sought to challenge the rule by filing suit in the District of Wyoming. Cloud Peak Energy
7 Inc. v. United States Dep't of Interior, No. 19-CV-120-SWS (Lead Case) (D. Wyo.). In
8 response to the lawsuit, the ONRR, now under the auspices of a new administration,
9 published a Postponement Notice in the Federal Register, postponing the Valuation Rule
10 indefinitely. Postponement of Effectiveness of the Consolidated Federal Oil & Gas and
11 Federal & Indian Coal Valuation Reform 2017 Valuation Rule, 82 Fed. Reg. 11,823,
12 11,824 (Feb. 27, 2017).

13 On August 7, 2017, ONRR published the Final Repeal, which repealed the
14 Valuation Rule “in its entirety” and reinstated the pre-Valuation Rule regulations. 82 Fed.
15 Reg. 36,934. That action prompted Plaintiffs to file the instant lawsuit, which alleged that
16 the ONRR’s repeal of the Valuation Rule violated the APA. The Court ultimately agreed
17 with Plaintiffs/Conservation Intervenors and granted their respective motions for summary
18 judgment. Order re Cross-Motions for Summ. J. (“Order”), Dkt. 72. The Court found that
19 the ONRR had committed a “number of serious violations of the APA” and that “its repeal
20 of the Valuation Rule was effectuated in a wholly improper manner.” Id. at 33-34. The
21 Court vacated the Final Repeal and reinstated the Valuation Rule. Id. No appeal was taken
22 from the Order.

23 On June 13, 2019, approximately three months after the issuance of the Order, the
24 ONRR issued a guidance document, referred to as a “Dear Reporter” letter. Segal Decl.
25 ¶ 3, Dkt. 74-1. The letter informed lessees that the Court had vacated the Final Repeal and
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1 reinstated the Valuation Rule. Id. Ex. B.⁴ The ONRR instructed lessees that “**all federal**
2 **oil and gas lessees and all federal and Indian coal lessees, should recalculate royalties**
3 **under the 2016 [Valuation] Rule for oil, gas, and coal production from January 1,**
4 **2017, forward.”** Id. (emphasis in original). In addition, the letter directed lessees to
5 “resubmit amended royalty reports, pay any underpaid royalties (or take a credit for
6 overpaid royalties), and then prospectively report and pay under the provisions outlined in
7 the 2016 [Valuation] Rule.” Id. However, the ONRR indicated that because “lessees may
8 need time to modify their royalty reporting systems and submit amended royalty reports,
9 [it] expect[ed] lessees to submit corrected reporting and royalty payment for all
10 production ... no later than January 1, 2020.” Id.

11 On November 20, 2019, six weeks before the January 1, 2020 compliance deadline,
12 the ONRR issued a second Dear Reporter letter, which extended the reporting compliance
13 deadline from January 1 to July 1, 2020. Segal Decl. ¶ 4. The letter explained that “the
14 [DOI had] received feedback from industry stating that because this reinstatement requires
15 system changes and re-reporting for the period January 1, 2017 through the present, that
16 [sic] additional time was necessary for industry to comply.” Id. Ex. C. The letter did
17 affirm, however, that: “Lessees are responsible for submitting amended reports and
18 additional payments, if applicable, under the 2016 Valuation Rule for production and sales
19 of Federal oil and gas occurring on and after January 1, 2017. Payors will remain liable for
20 late payment interest for any underpayment from the month the royalty payment was due
21 until paid.” Id.⁵

22
23 ⁴ On October 18, 2019, the Wyoming District Court in the Cloud Peak Energy action
24 enjoined enforcement of the Valuation Rule’s provisions regarding royalties for coal. As
such, the Valuation Rule and the ONRR’s instructions in the Dear Reporter letters apply
only to oil and gas lessees.

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26 ⁵ On June 30, 2020, after the close of briefing on the instant motion, the ONRR
27 issued a third Dear Reporter letter extending the reporting deadline from July 1, 2020, to
October 1, 2020. See Conservation Intervenors’ Notice of June 30, 2020 Dear Reporter
28 Letter, Ex. A, Dkt. 94. The letter cites lessees’ requests for additional time to comply as
well as the impact of the COVID-19 pandemic on the energy sector as reasons for the
extension. Id.

1 **B. THE INSTANT MOTION**

2 In response to the ONRR’s postponements, Conservation Intervenors filed a Motion
3 to Enforce Judgment. Dkt. 74. The motion alleges that the delays are contrary to the Order
4 reinstating the Valuation Rule. Id. As relief, the motion seeks a court order: (1) declaring
5 the ONRR’s delay is “inconsistent with the Court’s mandate”; (2) vacating the Dear
6 Reporter letters; and (3) requiring Federal Defendants to set an immediate deadline by
7 which oil and gas lessees must comply with the Valuation Rule. Id.

8 The Court referred the motion to enforce to Judge Hixson, who recommends
9 denying the motion. Dkt. 80, 85. His Recommendation concludes that the relief sought “is
10 beyond the scope of the Court’s prior Order,” and therefore a new lawsuit, rather than a
11 motion to enforce, is the appropriate mechanism for challenging ONRR’s postponements.
12 Recommendation at 6, 9.

13 Conservation Intervenors, now joined by Plaintiffs, have filed a Motion for De Novo
14 review of the Recommendation, requesting that the Court reject the Recommendation and
15 grant the Motion to Enforce Judgment. Federal Defendants and Industry Intervenors have
16 filed oppositions to the motion and Plaintiffs and Conservation Intervenors have filed a
17 joint reply. The matter is fully briefed and is ripe for adjudication.

18 **II. LEGAL STANDARD**

19 Under 28 U.S.C. § 636(b)(1), a district judge may authorize a magistrate judge to
20 prepare findings and recommendations on certain matters. Reynaga v. Cammisa, 971 F.2d
21 414, 416 (9th Cir. 1992). Once findings and recommendations are served, the parties have
22 fourteen days to file specific written objections thereto. 28 U.S.C. § 636(b); Fed. R. Civ. P.
23 72(b)(2). “Any objection filed pursuant to Fed. R. Civ. P. 72(b) and 28 U.S.C.
24 § 636(b)(1)(B) must be made as a ‘Motion for De Novo Determination of Dispositive
25 Matter Referred to Magistrate Judge.’” Civ. L.R. 72-3(a). The district court must make a
26 de novo determination of those portions of the magistrate judge’s report to which a party
27 has interposed an objection. Dawson v. Marshall, 561 F.3d 930, 932 (9th Cir. 2009) (citing
28 28 U.S.C. § 636(b)(1)(C)). “The district judge may accept, reject, or modify the

1 recommended disposition; receive further evidence; or return the matter to the magistrate
2 judge with instructions.” Fed. R. Civ. P. 72(b)(3).

3 **III. DISCUSSION**

4 Federal courts have “inherent power to enforce compliance with their lawful
5 orders....” Shillitani v. United States, 384 U.S. 364, 370 (1966); Hook v. Arizona, 972 F.2d
6 1012, 1014 (9th Cir. 1992) (“A district court retains jurisdiction to enforce its
7 judgments....”). A motion to enforce judgment is the “usual method” for requesting a court
8 to interpret its own judgment and compel compliance with a prior decision. Heartland
9 Hosp. v. Thompson, 328 F. Supp. 2d 8, 11 (D.C. Cir. 2004) (citations omitted). “The court
10 may grant the moving party only that relief to which it is entitled under the original
11 judgment.” State of California v. United States Dep’t of Labor, 155 F. Supp. 3d 1089, 1096
12 (E.D. Cal. 2016). If “the plaintiff has received all relief required by that prior judgment, the
13 motion to enforce is denied.” Heartland Hosp., 328 F. Supp. 2d at 11.

14 Plaintiffs/Conservation Intervenors contend that Judge Hixson erred in finding that
15 the postponements do not violate the Court’s Order and that any challenge to the
16 postponements must be brought in a new action. Mot. at 5-8. Reviewing the matter de
17 novo, the Court finds no error. Plaintiffs/Conservation Intervenors have already received
18 all the relief they sought in the action. In their Complaint, Plaintiffs alleged that the ONRR
19 violated the APA in enacting the Final Repeal. As relief, they sought—and obtained—
20 vacatur of the Final Repeal and reinstatement of the Valuation Rule. Because
21 Plaintiffs/Conservation Intervenors have already received the relief sought in the
22 pleadings—reinstatement of the Valuation Rule—their motion to enforce the judgment
23 should be denied. E.g., Heartland Hosp., 328 F. Supp. 2d at 11.

24 Plaintiffs/Conservation Intervenors do not dispute that the Court previously
25 reinstated the Valuation Rule. Nonetheless, they argue that postponing the royalty
26 reporting deadline is “inconsistent with the Court’s existing Judgment, because it thwarts
27 the effect of the Judgment.” Mot. at 5. Not so. The Dear Reporter letters clearly and
28 accurately recite the Court’s decision, and, importantly, acknowledge that the Valuation

1 Rule has been retroactively reinstated. Moreover, the letters instruct lessees to retroactively
2 recalculate their royalties from January 2017 in accordance with the Valuation Rule. Segal
3 Decl. Exs. B, C. Although the ONRR's letters have the effect of delaying payment of the
4 royalties, they do not eliminate or excuse lessees' obligation to calculate and pay royalties
5 in accordance with the Valuation Rule.

6 The Court also concurs with Judge Hixson's determination that any challenge to the
7 postponements must take the form of a new action. As noted, the Order vacated the Final
8 Repeal, which, by operation of law, reinstated the Valuation Rule. E.g., Paulsen v. Daniels,
9 413 F.3d 999, 1008 (9th Cir. 2005) ("The effect of invalidating an agency rule is to
10 reinstate the rule previously in force."). The ONRR has done nothing to prevent such
11 *reinstatement*. Rather, Plaintiffs/Conservation Intervenors' concerns are more accurately
12 characterized as objections to the ONRR's *enforcement* of the now-reinstated Valuation
13 Rule. To the extent that they believe the ONRR's actions are unreasonable, the appropriate
14 course of action is to file a new action under the APA. See Ctr. for Env'tl. Health v.
15 Wheeler, 429 F. Supp. 3d 702, 715 (N.D. Cal. 2019) ("The APA permits suit to 'compel
16 agency action unlawfully withheld or unreasonably delayed.'" (citing 5 U.S.C. § 706(1))
17 (Armstrong, J).⁶

18 Finally, the Court is unpersuaded by the Plaintiffs' citation to International Ladies'
19 Garment Workers' Union v. Donovan, 733 F.2d 921 (D.C. Cir. 1984) ("Donovan II"). In
20 that case, the D.C. Circuit had previously held in a prior appeal involving the same action
21 that the Secretary of Labor ("Secretary") had acted arbitrarily and capriciously in
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23 ⁶ Plaintiffs/Conservation Intervenors assert that, as it has done in the past, the ONRR
24 will continue to delay enforcement of the Valuation Rule "until it is able to finalize a
25 replacement, thereby nullifying the [Valuation] Rule before it ever takes effect." Mot. at 9.
26 It is true that the first Dear Reporter letters indicates that the ONRR is "evaluating
27 additional rulemaking in light of the current Order which reinstates the 2016 [Valuation]
28 Rule." Segal Decl. Ex. A at 1. In addition, the Court notes that the ONRR has a history of
delay and violating the APA as it pertains to the Valuation Rule. See Order at 6-8.
Nonetheless, it is speculative at this juncture to assume that the ONRR will replace the
Valuation Rule. Even if the ONRR promulgates a replacement for the Valuation Rule,
which is its prerogative provided it does so legally, lessees would remain obligated to remit
royalties under the Valuation Rule until such time as it is replaced, if at all.

1 rescinding a longstanding “homework” rule which prohibited industrial work from being
2 performed at home. Int’l Ladies’ Garment Workers’ Union v. Donovan, 722 F.2d 795, 799
3 (D.C. Cir. 1983) (“Donovan I”). The panel in Donovan I vacated the rescission and
4 ordered the homework rule reinstated. Id. The Secretary sought an emergency stay of the
5 ruling, which the D.C. Circuit rejected.

6 After the denial of the stay request, the Secretary issued “a final ‘emergency’ rule
7 suspending the effect of [Donovan I] ‘for a period of 120 days....’” Donovan II, 733 F.2d
8 at 921. The plaintiffs responded by filing a motion in the district court to compel
9 compliance with the mandate in [Donovan I], which the court denied. Though noting that
10 plaintiffs would “probably prevail” on the merits, the district court believed that it lacked
11 the authority to consider such a motion. Donovan II, 733 F.3d at 922. On appeal, the panel
12 in Donovan II held that the district court erred in concluding that it lacked the authority to
13 enforce an appellate mandate. Id. In remanding the matter to the district court, the court
14 concurred with the district court’s stated concerns regarding the Secretary’s actions. In
15 particular, the appellate court observed that “the Secretary has simply reimplemented
16 precisely the same rule that this court vacated as ‘arbitrary and capricious’ in its first
17 decision [in Donovan I].” Id. at 923.

18 In the instant case, Plaintiffs argue that, like the Secretary’s emergency rule, the
19 Dear Reporter letters have the effect of suspending a judicial decision. Mot. at 8. The
20 Court disagrees. The Secretary’s emergency rule affirmatively suspended implementation
21 of the mandate issued by the D.C. Circuit, thereby unilaterally reinstating the very rule that
22 Donovan I had vacated. In contrast, the Dear Reporter letters do not stay the Court’s Order
23 or prevent the reinstatement of the Valuation Rule. To the contrary, consistent with that
24 Order, the letters clearly state that the Final Repeal is vacated and that the Valuation Rule
25 governs the calculation of lessees’ royalty obligations from 2017 to present. Though
26 Plaintiffs/Conservation Intervenors may be unhappy with extensions of time for lessees to
27 report and pay their royalties, the fact remains that the Dear Reporter letters do not excuse
28 lessees from their obligations under the Valuation Rule.

1 **IV. CONCLUSION**

2 For the reasons stated above,

3 IT IS HEREBY ORDERED THAT Plaintiffs/Conservation Intervenors' Motion for
4 De Novo Determination of the Report and Recommendation is GRANTED IN PART and
5 DENIED IN PART. The Court grants the request to review the Recommendation de novo,
6 and upon doing so, OVERRULES Plaintiffs/Conservation Intervenors' objections thereto.
7 The Recommendation is ACCEPTED and shall become the Order of the Court. The
8 Conservation Intervenors' Motion to Enforce Judgment is therefore DENIED.

9 IT IS SO ORDERED.

10 Dated: 7/30/20

Saundra B. Armstrong
SAUNDRA BROWN ARMSTRONG
Senior United States District Judge

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