

1 1. Defendants’ Motion to Stay

2 On July 15, 2020 the Court issued an Order requiring the Government to review its
3 deliberative process privilege (“DPP”) claims and produce those documents that are not
4 predecisional or deliberative. See National Wildlife Federation v. U.S. Forest Service, 861 F. 2d
5 1114, 1117 (9th Cir. 1988) (requiring a document to be “*both* (1) ‘predecisional’ or ‘antecedent
6 to the adoption of agency policy’ and (2) ‘deliberative,’ meaning ‘it must actually be related to
7 the process by which policies are formulated.’”) (citation omitted, emphasis in original). The
8 Order followed the Court’s assessment of the 850 documents the Government submitted for *in*
9 *camera* review and its finding that the Government had erroneously asserted the privilege over
10 many of these documents. Indeed, for hundreds of the submitted documents, the Court could
11 find no plausible basis for the Government’s privilege claims at all.

12 Noting the enormous task remaining before the Parties and the Court of evaluating the
13 Government’s assertion of the DPP over approximately 48,000¹ documents, as a discovery
14 management tool the Court outlined a timeframe for documents that are presumptively not
15 entitled to DPP protection because they do not fall within the decision period for the Carter and
16 Mattis policies. Defendants were ordered to produce documents that were reviewed *in camera*
17 and not entitled to DPP protection by July 22, 2020 and to produce all documents that fall
18 outside the date ranges of July 13, 2015 to June 30, 2016 (Carter policy) and September 14, 2017
19 to January 11, 2018 (Mattis policy) and all documents or portions of documents that are purely
20 factual by July 29, 2020. The Court explicitly excepted from this production any documents

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23 ¹ The Government claims this figure is now approximately 40,000 documents and the number of documents
24 withheld solely on the basis of the DPP is now 25,000, down from the original 35,000 documents the Government
withheld. (Dkt. No. 547 at 2 n.1.) The Government provides no explanation for why it has disclosed 10,000
documents it vigorously defended as privileged for nearly three years, documents that were the subject of two
petitions for writs of mandamus to the Ninth Circuit.

1 implicated by the Government’s pending Petition for a Writ of Mandamus with the Ninth
2 Circuit. (See Dkt. Nos. 414-16.)

3 On the evening of July 20, 2020, Defendants filed a motion to stay the Court’s July 15,
4 2020 Order until the pending mandamus petition is resolved. (Dkt. No. 545.) Defendants
5 informed the Court that if it did not grant Defendants’ motion for a stay within 24 hours,
6 Defendants would file an emergency motion in the Ninth Circuit requesting a stay of this Court’s
7 July 15, 2020 Order. (Dkt. No. 547 at 3.) Because the 24-hour timeline Defendants propose
8 does not allow for a response from Plaintiffs, and because the Court will not issue a ruling on
9 Defendants’ Motion to Stay until it is fully briefed, the Court HOLDS IN ABEYANCE the
10 production deadlines in its July 15, 2020 Order (Dkt. No. 545) until it issues a ruling on
11 Defendants’ Motion to Stay (Dkt. No. 547).

12 2. Trial Date and Discovery Deadline

13 In the Parties’ July 17, 2020 Joint Status Report, Plaintiffs requested that the Court
14 postpone setting a new discovery cutoff and noted that this will likely delay trial beyond the
15 current, October 22, 2020 trial date. (Dkt. No. 546 at 6.) Among other things, Plaintiffs noted
16 Defendants’ pending mandamus petition and stalled productions have impacted Plaintiffs’ ability
17 to depose witnesses. (Id. at 4.) While Defendants objected to Plaintiffs’ request to vacate the
18 trial date “and indefinitely extend discovery” in the Joint Status report, two days later they filed
19 their Motion to Stay, threatening to file another petition for a writ of mandamus with the Ninth
20 Circuit if the Court did not stay Defendants’ current production deadlines. (Dkt. No. 547.)
21 Given the enormous number of relevant documents that remain contested in this matter, the
22 Court will postpone setting a new discovery cutoff and will set a new trial date of April 26, 2021.

1 Plaintiffs may wait to take depositions until after Defendants have produced documents in line
2 with the Court’s rulings and relevant to the particular witness being deposed.

3 **Conclusion**

4 In summary, the production deadlines in the Court’s July 15, 2020 Order (Dkt. No. 545)
5 are HELD IN ABEYANCE until the Court issues a written order on Defendants’ Motion to Stay
6 (Dkt. No. 547). Further, the Court sets a new trial date of April 26, 2021 and will not set a new
7 discovery cutoff deadline at this time.

8 Dated July 23, 2020.

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11 Marsha J. Pechman
12 United States Senior District Judge
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