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

CALIFORNIANS FOR RENEWABLE ENERGY, ASHURST BAR/SMITH COMMUNITY ORGANIZATION, CITIZENS FOR ALTERNATIVES TO RADIOACTIVE DUMPING, SAINT FRANCIS PRAYER CENTER, SIERRA CLUB, and MICHAEL BOYD,

Plaintiffs,

vs.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY and ANDREW R. WHEELER, in his official capacity as Administrator of the Environmental Protection Agency,

Defendants.

Case No: C 15-3292 SBA

**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS’ MOTION TO ALTER JUDGMENT**

Dkt. 117

Various public interest organizations filed suit against the Environmental Protection Agency (“EPA”) and its Administrator, Andrew Wheeler, under the Administrative Procedures Act (“APA”), 5 U.S.C. § 706(1), claiming that the EPA’s Office of Civil Rights (“OCR”) failed to timely act on their administrative complaints in accordance with 40 C.F.R. § 7.115 (“§ 7.115”). The Court previously entered final judgment in favor of Plaintiffs on five of the six claims alleged in the Second Amended Complaint.

1 This matter is presently before the Court on Defendants' Motion to Alter  
2 Judgment pursuant to Federal Rule of Civil Procedure 59(e). Having read and  
3 considered the papers submitted in connection with this matter, the Court  
4 GRANTS IN PART and DENIES IN PART said motion. The Court, in its  
5 discretion, finds this matter suitable for resolution without oral argument. See  
6 Fed. R. Civ. P. 78(b); N.D. Cal. Civ. L.R. 7-1(b).

7 **I. BACKGROUND**

8 Between 1992 and 2003, Plaintiffs filed five administrative complaints with  
9 the OCR (previously known as the External Civil Rights Compliance Office),  
10 pursuant to Title VI of the Civil Rights Act of 1964 ("Title VI"). The complaints  
11 alleged that decisions by state and local agencies to grant permits approving the  
12 operation of environmentally hazardous facilities (i.e., power plants, a refinery, a  
13 hazardous waste facility and a landfill) in minority communities violate Title VI's  
14 prohibition against discrimination by recipients of public funds.

15 Under § 7.115, the EPA must issue preliminary findings and any  
16 recommendations for achieving compliance within 180 days of accepting a Title  
17 VI administrative complaint for investigation. 40 C.F.R. § 7.115. Claims one  
18 through five were predicated on the OCR's failure to timely act on Plaintiffs'  
19 respective administrative complaints in accordance with § 7.115. Pursuant to  
20 5 U.S.C. § 706(1), Plaintiffs sought an order to "compel agency action unlawfully  
21 withheld or unreasonably delayed." In their sixth claim, Plaintiffs averred that the  
22 OCR engaged in a "pattern and practice" of failing to issue preliminary findings  
23 and recommendations for voluntary compliance, if any, within 180 days of  
24 accepting a Title VI complaint for investigation.

25 On March 30, 2018, the Court issued its ruling on Plaintiffs' motion for  
26 summary judgment and the EPA's motion to dismiss and for summary judgment.  
27 Dkt. 114. As to claims one through five, the Court granted summary judgment for  
28 Plaintiffs, finding that, under § 7.115, the EPA has a mandatory duty to issue

1 preliminary findings within 180 days of accepting a complaint for investigation,  
2 and that the EPA failed to comply with that duty. Summ. J. Order at 26, Dkt. 114.  
3 The Court granted summary judgment for the EPA on the “pattern and practice”  
4 claim, finding that the claim was not legally cognizable. *Id.* at 39.

5       Among the many arguments considered by the Court in connection with the  
6 parties’ cross-motions was the EPA’s contention that Plaintiffs’ claims, even if  
7 valid, are moot as a result of the OCR’s resolution of each of the underlying  
8 administrative complaints subsequent to the commencement of this action. The  
9 Court agreed that Plaintiffs’ request for injunctive relief was moot in light of the  
10 resolution of their complaints. However, the Court found that “effective relief”  
11 remained available to Plaintiffs in the form of declaratory relief and “a prospective  
12 injunction requiring the EPA to timely process Plaintiffs’ future Title VI  
13 complaints that are accepted for investigation by the EPA.” *Id.* at 32 (citing  
14 Rosemere Neighborhood Ass’n v. U.S. EPA, 581 F.3d 1169, 1171 (9th Cir.  
15 2009)).

16       In the conclusion of the summary judgment order, the Court directed the  
17 parties to meet and confer regarding the form of the proposed judgment. Dkt. 114  
18 at 39. In the event the parties could not agree on the terms of the judgment, the  
19 order instructed them to submit a joint letter which set forth their respective  
20 positions on any disputes concerning the proposed judgment. *Id.* The parties  
21 failed to reach an agreement and thus submitted a joint letter brief along with the  
22 proposed judgment. Dkt. 115 Ex. A & B.

23       The EPA objected, inter alia, to paragraph 5 of the proposed judgment,  
24 which stated, in relevant part, that: “Defendants must timely process any *pending*  
25 *and future* Title VI complaint submitted by Plaintiffs and accepted for  
26 investigation by EPA....” Dkt. 115-1 at 4 (emphasis added). The EPA challenged  
27 that provision on two grounds: (1) there should be a five-year time limit on the  
28 EPA’s compliance period; and (2) the injunctive relief should exclude “pending”

1 complaints and apply only to “future” complaints. Dkt. at 115-2 at 3. With regard  
2 to the latter objection, the EPA argued that the Court’s summary judgment order  
3 only provided injunctive relief for “future Title VI complaints.” *Id.* The Court  
4 ultimately agreed with the EPA regarding the time limit and modified the  
5 proposed judgment to indicate that the EPA’s obligations thereunder ceased after  
6 five years. Dkt. 116 (Judgment). The Court did not delete the reference to  
7 “pending” complaints. *Id.* Thus, paragraph 5 of the proposed judgment  
8 (renumbered paragraph 4 in the final judgment) was modified, as indicated by the  
9 italicized language below:

10           The EPA shall timely process any pending and future  
11           Title VI complaints submitted by Plaintiffs and  
12           accepted for investigation by EPA as follows: for any  
13           pending investigation into a Title VI complaint  
14           submitted by any Plaintiff, EPA must issue  
15           preliminary findings and any recommendations for  
16           voluntary compliance, or otherwise resolve the  
17           complaint, within 180 days of the date of entry of this  
18           judgment; for any Title VI complaint submitted by any  
19           Plaintiff and accepted by EPA after the date of entry of  
20           this judgment, EPA must issue preliminary findings  
21           and any recommendations for voluntary compliance,  
22           or otherwise resolve the complaint, within 180 days of  
23           the date of acceptance. ***The requirements of this  
24           paragraph shall continue for a period of five years  
25           from the date judgment is entered.***

19 Judgment at 2 (emphasis added), Dkt. 116.

20           After the Court entered Judgment, the EPA filed the instant motion to  
21 amend. Dkt. 117. With regard to the provision that “Defendants must timely  
22 process any *pending and future* Title VI complaint submitted by Plaintiffs,” the  
23 EPA now takes the complete opposite position that it took in its letter brief.  
24 Specifically, it argues that the reference to “future,” as opposed to “pending,”  
25 complaints should be deleted, such that paragraph 4 would read: “The EPA shall  
26 timely process any *pending* Title VI complaints submitted by Plaintiffs ....” *Id.* at  
27 10 (emphasis added). According to the EPA, relief under the APA is limited to  
28 rectifying a discrete agency action that it has “already” failed to take. As such, the

1 Court, in the EPA’s view, cannot grant prospective injunctive relief with regard to  
2 future administrative complaints that Plaintiffs may file within the next five years.  
3 Dkt. 117 at 10-14.

4 As an alternative to deleting the reference to “future” complaints, the EPA  
5 proposes altering the final judgment to account for the fact that the 180-day  
6 resolution deadline may be extended pursuant to EPA’s regulations in the event  
7 that “the complainant and the party complained against agree to a delay pending  
8 settlement negotiations.” 40 C.F.R. § 7.120. To that end, the EPA suggests  
9 including the following text after the comma between “complaint” and “within” in  
10 the next to last sentence of paragraph 4: “subject to any extension agreement  
11 between the complainant and the party complained against under 40 C.F.R.  
12 § 7.120.” *Id.* at 11 n.3. The proposed, alternative modification is denoted below  
13 in italics:

14 The EPA shall timely process any pending and future  
15 Title VI complaints submitted by Plaintiffs and  
16 accepted for investigation by EPA as follows: for any  
17 pending investigation into a Title VI complaint  
18 submitted by any Plaintiff, EPA must issue  
19 preliminary findings and any recommendations for  
20 voluntary compliance, or otherwise resolve the  
21 complaint, within 180 days of the date of entry of this  
22 judgment; for any Title VI complaint submitted by any  
23 Plaintiff and accepted by EPA after the date of entry of  
24 this judgment, *subject to any extension agreement  
25 between the complainant and the party complained  
26 against under 40 C.F.R. § 7.120*, EPA must issue  
27 preliminary findings and any recommendations for  
28 voluntary compliance, or otherwise resolve the  
29 complaint, within 180 days of the date of acceptance.  
30 The requirements of this paragraph shall continue for a  
31 period of five years from the date judgment is entered.

32 Plaintiffs oppose the EPA’s motion insofar as it seeks to delete the reference to  
33 “future” administrative complaints; however, they do not object to the EPA’s  
34

1 alternative modification regarding extending the 180-day deadline under section  
2 7.120. The motion is now fully briefed and is ripe for adjudication.<sup>1</sup>

3 **II. LEGAL STANDARD**

4 Rule 59(e) of the Federal Rules of Civil Procedure allows parties to move  
5 to alter or amend a judgment within twenty-eight days of entry of the judgment.  
6 Fed. R. Civ. P. 59(e). A court has “considerable discretion in granting or denying  
7 the motion.” McDowell v. Calderon, 197 F.3d 1253, 1255 n.1 (9th Cir. 1999) (en  
8 banc). However, “a motion for reconsideration should not be granted, absent  
9 highly unusual circumstances, unless the district court is presented with newly  
10 discovered evidence, committed clear error, or if there is an intervening change in  
11 the controlling law.” Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.,  
12 571 F.3d 873, 880 (9th Cir. 2009) (internal quotation and citation omitted).

13 Reconsideration of a judgment under Rule 59(e) is an “extraordinary  
14 remedy, to be used sparingly in the interest of finality and conservation of judicial  
15 resources.” Carroll v. Nakatani, 342 F.3d 934, 945 (9th Cir. 2003). As such, “[a]  
16 Rule 59(e) motion may not be used to raise arguments or present evidence for the  
17 first time when they could reasonably have been raised earlier in the litigation.”  
18 Kona Enters., Inc. v. Estate of Bishop, 229 F.3d 877, 890 (9th Cir. 2000).

19 Accordingly, a district court is within in its discretion to deny a motion for  
20 reconsideration where the moving party had the opportunity but failed to raise the  
21 argument earlier. Id.

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25 <sup>1</sup> The Court held the motion in abeyance and referred the matter to  
26 Magistrate Judge Laurel Beeler to conduct a settlement conference in an effort to  
27 resolve the dispute concerning the language of the Judgment, along with any other  
28 outstanding issues. Despite the parties’ efforts to reach an agreement, they were  
unable to do so. As a result, the Court lifted the stay and directed the parties  
completed briefing on the EPA’s motion to amend the judgment. Dkt. 141, 142,  
143.

1 **III. DISCUSSION**

2 The threshold question presented is whether the EPA could have but failed  
3 to object to the provision in paragraph 5 of the final judgment requiring the EPA  
4 to “timely process any pending *and future* Title VI complaints submitted by  
5 Plaintiffs....” Dkt. 116. As noted above, a district court has no obligation to  
6 consider an argument raised for the first time on a motion for reconsideration. See  
7 Banister v. Davis, 140 S. Ct. 1698, 1703 (2020) (“courts will not address new  
8 arguments or evidence that the moving party could have raised before the  
9 decision”); Kona Enters., 229 F.3d at 890; see also Slaven v. Am. Trading Transp.  
10 Co., 146 F.3d 1066, 1069 (9th Cir. 1998) (“if a party fails to raise an objection to  
11 an issue before judgment, he or she waives the right to challenge the issue on  
12 appeal”).

13 In the instant case, the Court, in its summary judgment ruling, instructed  
14 Plaintiffs to meet and confer with the EPA regarding the terms of the proposed  
15 judgment, and for the parties to submit a joint letter brief addressing any points of  
16 contention. Dkt. 114 at 39. Paragraph 5 of the proposed judgment clearly recited  
17 that “Defendants must timely process any *pending and future* Title VI complaint  
18 submitted by Plaintiffs....” Dkt. 151-1 at 4. The only objections and requests  
19 made by the EPA with respect to that provision were that: (1) the reference to  
20 “pending” complaints be deleted, and (2) its obligation to timely process  
21 Plaintiffs’ complaints be limited to five years. Dkt. at 115-2 at 3. Nowhere in the  
22 letter brief did the EPA argue, as it does now, that the provision for “future” Title  
23 VI complaints is beyond the scope of the APA. To the contrary, the EPA  
24 expressly acknowledged that an injunction as to future complaints is consistent  
25 with the Court’s summary judgment ruling. Dkt. 115-2 at 3.

26 The EPA tacitly concedes its failure to object to the inclusion of “future”  
27 complaints but blames the Court for not providing sufficient space in the joint  
28 letter brief to make such an objection. This contention strains credulity. The

1 parties submitted a two-page *single-spaced* letter brief identifying their respective  
2 points of concern in which the EPA devoted an entire paragraph to paragraph 5 of  
3 the proposed judgment. To the extent that the EPA then had any concern  
4 regarding the Court’s authority to require it to timely address future complaints  
5 submitted by Plaintiffs, it, at a minimum, could have expressed that objection in a  
6 sentence. If the Court required elaboration, it could have scheduled a hearing or  
7 ordered further briefing. Moreover, if the EPA believed it required more space to  
8 articulate any objections or concerns, it could have filed an administrative motion  
9 pursuant to the Civil Local Rules requesting an enlargement of the page limit. As  
10 such, the EPA is hard-pressed to now claim that it did not have a sufficient  
11 opportunity to state its objection to the injunctive relief provision of the proposed  
12 judgment.<sup>2</sup>

13 In sum, the Court declines to consider the EPA’s newly-asserted contention  
14 that the Court should not have included “future” complaints within the scope of  
15 injunctive relief afforded to Plaintiffs. See Banister, 140 S. Ct. at 1703. Having  
16 failed to avail itself of the opportunity to object to the inclusion of such relief  
17 before the judgment was entered, the EPA will not be allowed to make such an  
18 objection for the first time in its motion for reconsideration. Arch Ins. Co. v. FTR  
19 Int’l Inc., No. CV122544JFWRNBX, 2013 WL 12173916, at \*5 (C.D. Cal. May  
20 31, 2013) (defendants’ belated objection to the form of the judgment deemed  
21 waived where they had the opportunity, but failed, to object before the judgment  
22 was entered). Under the circumstances, the Court finds that the matter of whether

23 <sup>2</sup> It also bears noting that in their summary judgment motion, Plaintiffs  
24 expressly and unequivocally stated that they were seeking prospective relief with  
25 respect to administrative complaints filed in the future. Dkt. 98 at 29 (demanding  
26 that the EPA “comply with the 180-day timeline to issue preliminary findings for  
27 any future Title VI complaints filed by Plaintiffs and accepted for investigation by  
28 EPA.”) (emphasis added). Id. at 29-33. The EPA did not respond to this claim  
request on the merits. Instead, the EPA made a procedural argument that the  
Court had previously adjudicated such request—when, in fact, it had not done so.  
Dkt. 100 at 9. Notably, the EPA did not argue, as it does now, that the Court has  
no legal authority under the APA to grant prospective injunctive relief.



1 the Court exceeded its authority has been waived, and therefore, reconsideration is  
2 not warranted.<sup>3</sup>


3 **IV. CONCLUSION**

4 For the reasons stated above,

5 IT IS HEREBY ORDERED THAT Defendants’ Motion to Alter Judgment  
6 is DENIED IN PART and GRANTED IN PART. The motion is denied with  
7 respect to the EPA’s request to delete the reference to “future” complaints. The  
8 motion is granted with respect to the EPA’s alternative request. The judgment  
9 shall be modified to include the following text following the comma between  
10 “complaint” and “within” in the next to last sentence of paragraph 4: “subject to  
11 any extension agreement between the complainant and the party complained  
12 against under 40 C.F.R. § 7.120.” The Court will issue an amended judgment  
13 reflecting this revision.

14 IT IS SO ORDERED.

15 Dated: 09/30/20

  
16 SAUNDRA BROWN ARMSTRONG  
17 Senior United States District Judge  
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24 <sup>3</sup> Waiver aside, the substance of the EPA’s objection—that a district court  
25 has no authority to impose prospective relief—is unconvincing. “[A]s a court of  
26 equity conducting judicial review under the APA, [this Court] has broad powers to  
27 order ‘mandatory affirmative relief,’ ... if such relief is ‘necessary to accomplish  
28 complete justice....’” Nw. Env’tl. Def. Ctr. v. Bonneville Power Admin., 477 F.3d  
668, 680-81 (9th Cir. 2007)) (internal citations omitted); E.E.O.C. v. Peabody W.  
Coal Co., 610 F.3d 1070, 1085 (9th Cir. 2010) (“Prospective relief requiring, or  
having the effect of requiring, governmental officials to obey the law has long  
been available.”).