

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

SOUTH CAROLINA COASTAL)
CONSERVATION LEAGUE, CHARLESTON)
WATERKEEPER, AMERICAN RIVERS,)
CHATTAHOCHEE RIVERKEEPER,)
CLEAN WATER ACTION, DEFENDERS)
OF WILDLIFE, FRIENDS OF THE)
RAPPAHANNOCK, NATIONAL WILDLIFE)
FEDERATION, NATURAL RESOURCES)
DEFENSE COUNCIL, NORTH CAROLINA)
COASTAL FEDERATION, and NORTH)
CAROLINA WILDLIFE FEDERATION,)

Case No. 2:19-cv-3006-DCN

Plaintiffs,)

**JOINT MOTION TO HOLD
CASE IN ABEYANCE**

v.)

ANDREW R. WHEELER, in his official)
Capacity as Administrator of the U.S.)
Environmental Protection Agency; the U.S.)
ENVIRONMENTAL PROTECTION AGENCY;)
RICKEY DALE "R.D." JAMES, in)
his official capacity as Assistant Secretary of the)
Army (Civil Works); and the U.S ARMY)
CORPS OF ENGINEERS,)

Defendants.)

Plaintiffs South Carolina Coastal Conservation League, Charleston Waterkeeper, American Rivers, Chattahoochee Riverkeeper, Clean Water Action, Defenders of Wildlife, Friends of the Rappahannock, National Wildlife Federation, Natural Resources Defense Council, North Carolina Coastal Federation, and North Carolina Wildlife Federation ("Plaintiffs"), jointly with Defendants Andrew R. Wheeler, in his official capacity as Administrator of the U.S. Environmental Protection Agency; the U.S. Environmental Protection Agency ("EPA"); Rickey Dale James, in his official capacity as Assistant Secretary of the Army (Civil Works); and the

U.S. Army Corps of Engineers (“Defendants”), by and through undersigned counsel and pursuant to the Court’s inherent authority to control its docket, jointly move the Court to hold this case in abeyance for seventy-five (75) days.

In support of this motion, the Plaintiffs and the Defendants state the following:

1. Plaintiffs filed their Complaint, Doc. 1, on October 23, 2019, and served it on Defendants before the end of October, 2019;

2. On January 17, 2020, Defendants moved to dismiss the complaint for lack of subject matter jurisdiction;

3. On January 23, 2020, the Administrator of EPA and the Assistant Secretary of the Army for Civil Works signed a final rule entitled “Navigable Waters Protection Rule: Definition of ‘Waters of the United States.’” The pre-publication version is available on EPA’s website, <https://www.epa.gov/nwpr/final-rule-navigable-waters-protection-rule> (last visited February 13, 2020). This rule defines “waters of the United States” under the Clean Water Act and will replace the existing definition promulgated in “Definition of ‘Waters of the United States’—Recodification of Pre-Existing Rules,” 84 Fed. Reg. 56,626 (Oct. 22, 2019), which is the subject of this litigation. The new rule will be published in the Federal Register and will be effective 60 days thereafter.

4. Because the finalization of a revised definition of “waters of the United States” could bear upon Defendants’ motion to dismiss, and counsel for the Plaintiffs and the Defendants are both actively engaged in time-consuming litigation that is related to this case, the parties filed a joint motion on January 27, 2020, seeking a twenty-one (21) day extension on the briefing schedule for Defendants’ motion to dismiss, see Doc. 29.

5. On January, 28, 2020, the Court granted the parties' motion for extension of time.
Doc. 30.

6. The parties have further conferred and agree that the finalization of a revised definition of "waters of the United States" may affect the issues and arguments at play in this litigation and other related legal challenges regarding the regulatory definition of "waters of the United States." The parties agree that holding this case in abeyance for seventy-five (75) days would allow the parties time to evaluate the new rule.

7. Under the parties' proposal, all pending deadlines, including the remaining briefing deadlines on Defendants' motion to dismiss and Defendants' obligation to file the administrative record, would be held in abeyance for seventy-five (75) days, but Plaintiffs would not be precluded from moving to amend or supplement the complaint during that period pursuant to Fed. R. Civ. P. 15.¹ At the conclusion of the seventy-five (75) day abeyance period, the parties would confer and provide the Court with a joint status report and recommendations on whether and what further proceedings are necessary in this Court.

8. The Court has inherent authority to hold this litigation in abeyance for efficiency and fairness purposes if the resolution of pending matters "bear[s] upon the case" or "will help clarify the current issues[.]" Rice v. Astrue, No. 4:06-cv-02770-GRA, 2010 WL 3607474, at *2 (D.S.C. Sept. 9, 2010) (collecting cases) (internal citations omitted).

9. For these reasons, the parties jointly request that the Court hold this case in abeyance for seventy-five (75) days.

10. This request is made in good faith and not for purposes of delay.

¹ Defendants reserve all rights to take a position on and respond to any motion to amend or supplement that Plaintiffs may file.

11. Pursuant to Local Civ. Rule 7.02 (D.S.C.), counsel for the Plaintiffs and counsel for the Defendants have consulted regarding this motion, and all have agreed to join this request.

Thus, the Plaintiffs and the Defendants respectfully request that this Court grant their joint motion to hold this case in abeyance for seventy-five (75) days.

Respectfully submitted this 14th day of February, 2020.

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